

STATE OF CALIFORNIA

SENATE SELECT COMMITTEE TO INVESTIGATE  
PRICE MANIPULATION OF THE WHOLESALE ENERGY MARKET

HEARING RE: REVIEW THE MANIPULATION OF ELECTRONIC DATA BY ENRON

REVIEW OF COMPLIANCE WITH SUBPOENA BY SOUTHERN  
CALIFORNIA EDISON

EXAMINATION OF RESPONSES TO INTERROGATORIES BY  
WILLIAMS AND LADWP

RESPONSES FROM NCPA AND CITY OF REDDING TO PREVIOUS  
COMMITTEE TESTIMONY

STATE CAPITOL

ROOM 112

SACRAMENTO, CALIFORNIA

THURSDAY, JUNE 27, 2002

1:07 P.M.

Reported by:

Evelyn J. Mizak  
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR JOSEPH DUNN, Chair

SENATOR WILLIAM MORROW, Vice Chair

SENATOR DEBRA BOWEN

SENATOR MAURICE JOHANNESSEN

SENATOR SHEILA KUEHL

MEMBERS ABSENT

SENATOR WES CHESBRO

SENATOR MARTHA ESCUTIA

SENATOR BYRON SHER

STAFF PRESENT

LARRY DRIVON, Committee Special Counsel

DONNA DRIVON, Committee Technical Consultant

ALEXANDRA MONTGOMERY, Committee Consultant

RONDA PASCHAL, Committee Consultant

IRMA MORALES, Committee Assistant

CHRISTIAN SCHREIBER, Legislative Aide to SENATOR DUNN

WADE TEASDALE, Chief of Staff to SENATOR MORROW

ROBERT PRATT, Deputy Legislative Counsel  
Office of Legislative Counsel

SCOTT CHAVEZ, Consultant to SENATOR MORROW

DAVID DURAN, Consultant to SENATOR MORROW

ALSO PRESENT

PETER SOROKIN, Forensic Computer Expert  
Random Access, Inc.

JIM WOODRUFF, Attorney  
Southern California Edison

JEFF SHOHET, Attorney  
Gray Cary Ware & Freindenrich  
Representing Williams

STANTON J. SNYDER, Assistant City Attorney  
Los Angeles Department of Water and Power

MARK S. WARD, Manager  
Energy Control Center, Wholesale Marketing Business Unit  
Los Angeles Department of Water and Power

KENNETH A. SILVER, Manager of Grid Operations  
Bulk Power Business Unit  
Los Angeles Department of Water and Power

MARCIA H. KAMINE, Assistant City Attorney  
Los Angeles Department of Water and Power

JAMES C. FEIDER, Electric Utility Director  
Redding Electric Utility, City of Redding

DON DAME, Assistant General Manager  
Power Management  
Northern California Power Agency (NCPA)

JOHN FISTOLERA, Legislative Director  
Northern California Power Agency (NCPA)

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01 P-R-O-C-E-E-D-I-N-G-S

02 --ooOoo--

03 CHAIRMAN DUNN: Okay, why don't we get started,  
04 everybody.

05 Let me take care of some housekeeping measures  
06 before we get into the substance of this afternoon's committee  
07 hearing. I'll review our agenda for the day in just a couple  
08 minutes.

09 To procedural housekeeping. First, I've had a  
10 number of questions about the status of our request for document  
11 subpoenas to Rules Committee yesterday. I withdrew that  
12 request. We will wait and review the documents relating to the  
13 production by Perot Systems, which is in process. As most of  
14 you are aware, we've already gotten five-plus boxes from Perot  
15 Systems. We're expecting more early next week. Subpoenas also  
16 related to documents associated with Mr. Paul Gribik and one  
17 other former Perot Systems employee.

18 We have been assured by their respective legal  
19 counsel that the documents that may be in their possession will  
20 be produced voluntarily. We will wait until we get that  
21 production. If in fact there is to the committee's satisfaction  
22 evidence of withheld documents, missing chunks of documents,  
23 whatever the case may be, we'll immediately return to Rules  
24 Committee for a subpoena and take all steps that are necessary  
25 from that point forward.

26 July 11th, for those of you who have been paying  
27 any attention to the last month or so, you will know that July  
28 11th is our next scheduled hearing. That is the hearing we

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01 expect to have the Perot System representatives, plural,  
02 including Mr. Perot himself testify here in Sacramento.

03 We expect that hearing to be a full day hearing  
04 because many witnesses that have some knowledge on the Perot  
05 Systems question will be coming to testify on that particular  
06 day. Again, that is July 11th.

07 Depending upon the outcome of today's hearing,  
08 there may be some wrap-up issues from today's hearing that will  
09 be addressed at the July 11th hearing.

10 And for those who have suffered through some of  
11 our grueling hearings in the past, we're going to pick up the  
12 pace here. We've got a lot of stuff we want to accomplish in  
13 the next few weeks. So, you can expect that there may be quite  
14 a few hearings in the coming month or so.

15 With respect to today's agenda, there are four  
16 items. I want to give everybody a best guess time for each  
17 item, so if there's some you want to be here for, and some you  
18 do not, you can assess it.

19 The first one, which is a continuation, actually,  
20 I think from two other times, if I'm not mistaken, at least one,  
21 with respect to the electronic data production by Enron, we  
22 expect to take approximately 30 minutes.

23 Number two on the agenda, relating to Southern  
24 California Edison, we expect to be very short, less than ten  
25 minutes in all probability.

26 The third and fourth issues are our most  
27 substantive today, substantive being the ones that will occupy  
28 most of our time. We expect both of those two issues

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01 independently to take up most of the time today.

02 Part of three and four will be introduced and  
03 done by the Chair. The other part will be done by Senator  
04 Morrow. But we will explain that as we get into that a little  
05 bit later on this afternoon.

06 So, unless there's anything further, Senator

07 Morrow, any comments you wish to make to start out?  
08 Seeing no comments, why don't we begin with the  
09 first agenda item, and let me make an introductory comment on  
10 this one.

11 As everybody is aware, we had intended to have  
12 the witness that is here today to come before us sometime ago,  
13 but due to other matters the committee had to take care of, we  
14 had to continue that. Thank you very much for your indulgence  
15 in that regard, having been continued several specific times.

16 Where this issue comes from is as follows, and  
17 bear with me, because what originally prompted our desire to  
18 have this testimony, the environment has changed a little bit,  
19 and I want to be open and honest with everybody about that.

20 This relates to the production of nine CDs of  
21 electronic data by Enron pursuant to the committee's request.  
22 We had asked for a variety of information through electronic  
23 data, including e-mails of certain individuals and so forth.  
24 Nine CDs were produced.

25 We then retained the services of a forensic IT  
26 expert who assisted us in examining those CDs.

27 We found what we consider to be some disturbing  
28 discoveries in that analysis, which prompted further

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01 communications directly with Enron, both their outside legal  
02 counsel and their general counsel's office.

03 Since that time when we first brought those  
04 discoveries to the attention of Enron, and I want to make sure  
05 everybody understands that, we have received a very high level  
06 of cooperation from Enron, both outside counsel and its general  
07 counsel, with respect to the information we originally sought  
08 with the production of the nine CDs. We can talk about that in  
09 a little more detail afterwards, but I wanted to make sure that  
10 much has transpired since the original findings with respect to  
11 the CDs.

12 So, why don't we do it this way. Mr. Drivon, why  
13 don't you take over at this point in time with respect to agenda  
14 item number one.

15 MR. DRIVON: Thank you, Senator.

16 We have a witness. Can you state your name,  
17 please, and spell your last name for the record.

18 MR. SOROKIN: Peter Sorokin, S-o-r-o-k-i-n.

19 MR. DRIVON: Mr. Sorokin, I understand that you  
20 represent Random Access, Inc.; is that correct?

21 MR. SOROKIN: Yes, that is correct.

22 MR. DRIVON: What is Random Access, Inc?

23 MR. SOROKIN: A consultancy.

24 MR. DRIVON: And one of the things that Random  
25 Access does is to provide forensic services with respect to  
26 computer data information?

27 MR. SOROKIN: That is correct.

28 MR. DRIVON: And you received an assignment from

0005  
01 the committee through me to analyze certain data supplied to us  
02 by Enron Corporation; is that correct?

03 MR. SOROKIN: Correct.

04 MR. DRIVON: And you have prepared for us a  
05 series of slides to illustrate what you're going to tell us here  
06 today. And this information can be highly technical and highly  
07 complicated.

08 The purpose of these slides is to help everyone  
09 understand it; right?

10 MR. SOROKIN: Correct.

11 MR. DRIVON: Let's go to first slide. I guess  
12 this is just a cover slide. We can move to the next slide,  
13 which just tells us they provided ten CDs; correct?

14 MR. SOROKIN: Yes. Originally there were nine.  
15 MR. DRIVON: Now, a CD will hold how much  
16 information?  
17 MR. SOROKIN: Approximately 650 megabytes to 800  
18 megabytes, depending on the brand.  
19 MR. DRIVON: And that would be 60 or 70 or 80  
20 volumes of information like a law book?  
21 MR. SOROKIN: In rough equivalency, approximately  
22 500 floppies.  
23 MR. DRIVON: With this information, you went to  
24 each of these, opened it up to try to see what was there;  
25 correct?  
26 MR. SOROKIN: Correct.  
27 MR. DRIVON: If you could turn to the next slide,  
28 please. This slide shows us what was provided in bulk and what  
0006 netted out; is that right?  
01 MR. SOROKIN: Yes. After the contents of all the  
02 CDs were added, this shows the compilation.  
03 MR. DRIVON: Does this show us whether or not one  
04 CD was completely full when you moved it together?  
05 MR. SOROKIN: Correct. It's less than one CD.  
06 MR. DRIVON: So, where it says "FREE SPACE," that  
07 would be, say, one-third of the CD was --  
08 MR. SOROKIN: On a typical 650 megabyte CD, the  
09 yellow space that represents free space on that CD.  
10 MR. DRIVON: And you actually were able to get  
11 and compile a count of the data that were on there, a sum of 400  
12 and some --  
13 MR. SOROKIN: Just over 400 megs.  
14 MR. DRIVON: And a meg is a megabyte?  
15 MR. SOROKIN: Megabyte, correct.  
16 MR. DRIVON: The next slide shows us what?  
17 MR. SOROKIN: This is the individual breakdown of  
18 each CD.  
19 MR. DRIVON: Trying to show us --  
20 MR. SOROKIN: The total volume.  
21 MR. DRIVON: Of the total, what was contributed  
22 by each CD.  
23 Now, the next slide is a review, or lays out for  
24 us what the review is going to be; is that correct?  
25 MR. SOROKIN: Correct.  
26 MR. DRIVON: If you could, go through that real  
27 quickly for us here?  
0007 MR. SOROKIN: Okay. Issues regarding the data  
01 found on the CDs, there are restricted amounts of information.  
02 There's gaps in times of the material provided. There are  
03 certain files that are unreadable. There is certain files that  
04 are encrypted. There are certain files that are incomplete,  
05 deleted or destroyed. There is reference to websites, and  
06 e-mails, and README files, and sample data bases.  
07 MR. DRIVON: This tells us that issues you were  
08 looking at included tampering, destruction, obstruction, and  
09 general incompetence?  
10 MR. SOROKIN: Correct.  
11 MR. DRIVON: And this mentions that certain of  
12 the data had encrypted files?  
13 MR. SOROKIN: Correct.  
14 Mr. Drivon: And as I understand it, certain of  
15 the data were also protected with passwords and access codes; is  
16 that correct?  
17 MR. SOROKIN: Correct.  
18 MR. DRIVON: Now, with respect to the access  
19 codes and passwords, you were able to defeat those in order to  
20

21 further your investigation?  
 22 MR. SOROKIN: Correct.  
 23 MR. DRIVON: So they weren't a problem, at least  
 24 after you got finished with it?  
 25 MR. SOROKIN: In most cases.  
 26 MR. DRIVON: All right. In addition to that, you  
 27 say that certain of these files were encrypted?  
 28 MR. SOROKIN: Correct.

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 01 MR. DRIVON: And encrypting in the computer arena  
 02 comes at different levels; is that right?  
 03 MR. SOROKIN: Yes.  
 04 MR. DRIVON: What was the level of encryption  
 05 that was found in these documents?  
 06 MR. SOROKIN: It's commercially very strong  
 07 encryption.  
 08 MR. DRIVON: This is the sort --  
 09 MR. SOROKIN: Very strong encryption.  
 10 MR. DRIVON: This is the sort of encryption, for  
 11 instance, that from time to time has been held not exportable  
 12 from the United States, or can't be sold to other foreign  
 13 countries because it's too strong?  
 14 MR. SOROKIN: That is correct.  
 15 MR. DRIVON: With respect to these data that were  
 16 encrypted, as I understand it, Mr. Sorokin, you and your  
 17 associates were able to defeat the encryption in most cases; is  
 18 that correct?  
 19 MR. SOROKIN: Correct.  
 20 MR. DRIVON: Now, the equipment that you used to  
 21 do this you've told me in some detail, and I want to sort of  
 22 summarize it, because it gets pretty complicated.  
 23 But if I understand it correctly, you used some  
 24 basic CD tools, or excuse me, some basic computer tools. You  
 25 used some basic analytical and advanced analytical strategies,  
 26 and you used some very sophisticated and extremely powerful  
 27 computer tools; is that correct?  
 28 MR. SOROKIN: Yes, data mining.

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 01 MR. DRIVON: For data mining?  
 02 MR. SOROKIN: Correct.  
 03 MR. DRIVON: All right.  
 04 And would you be willing to share with us your  
 05 strategies and methods for having accomplished the defeating of  
 06 the encryption and passwords, access codes, and how you went  
 07 about this? Would you be willing to share that?  
 08 MR. SOROKIN: No. That's proprietary information.  
 09 MR. DRIVON: And as a matter of fact, your  
 10 agreement with the Senate, before you agreed to work for us, was  
 11 that you would not be required to share your methods with us;  
 12 correct?  
 13 MR. SOROKIN: That is correct.  
 14 MR. DRIVON: Let's go to the next slide. This  
 15 shows us, if I understand it correctly, each person who was  
 16 involved in this search. For instance, Mr. Lay, Mr. Skilling,  
 17 Mr. Kean, Mr. Shapiro, et cetera; is that correct?  
 18 MR. SOROKIN: Correct.  
 19 MR. DRIVON: Then this shows us a spread of the  
 20 data that was provided with respect to each of those persons,  
 21 the CD, original CD that it was -- or the original that was  
 22 given to us that it appeared on, and a breakdown of the files  
 23 that were contained in that; correct?  
 24 MR. SOROKIN: Correct.  
 25 MR. DRIVON: So, have we covered the basics of  
 26 what this slide is about?  
 27 MR. SOROKIN: Yes.

28 MR. DRIVON: Let's move on.  
0010  
01 Now, this slide, if I understand our  
02 conversations, tells us that -- we had requested pursuant to  
03 your instruction the same information with respect to each of  
04 the men and women who were listed before; is that correct?  
05 MR. SOROKIN: Correct.  
06 MR. DRIVON: And yet, you say Enron provided  
07 vastly different information from each?  
08 MR. SOROKIN: Yes. According to the previous  
09 slide, you can see the drastic difference in information  
10 provided on each CD.  
11 MR. DRIVON: With a search being conducted in  
12 this way, that is to say, identical information from the  
13 standpoint of typology, verticality, and linearity, is it  
14 consistent with a full disclosure that vastly different  
15 information would result?  
16 MR. SOROKIN: It is completely very different.  
17 MR. DRIVON: So, what does this tell us?  
18 MR. SOROKIN: Very inconsistent information was  
19 produced per person.  
20 MR. DRIVON: And the inconsistency -- Senator  
21 Dunn is hard of hearing. He wants you to speak up.  
22 MR. SOROKIN: Sorry, I'll move closer.  
23 MR. DRIVON: In other words, what you're telling  
24 us is, if the same request is made, and the search is done in  
25 the same way, the same quality of data should show up; is that  
26 correct?  
27 MR. SOROKIN: Types of information.  
28 MR. DRIVON: The same types of information should  
0011 show up.  
01 MR. SOROKIN: Correct.  
02 MR. DRIVON: And the same types of information  
03 did not show up?  
04 MR. SOROKIN: Correct.  
05 MR. DRIVON: And that indicated to you that there  
06 was some irregularity in this production in that regard;  
07 correct?  
08 MR. SOROKIN: Definitely.  
09 MR. DRIVON: Your conclusion, "The committee was  
10 NOT provided with a complete set of data pursuant to its  
11 request."  
12 MR. SOROKIN: Further requests, yes.  
13 MR. DRIVON: And that conclusion is based upon  
14 your analysis of the data up to this particular level of  
15 analysis?  
16 MR. SOROKIN: Yes, e-mail ranges, et cetera;  
17 correct.  
18 MR. DRIVON: Would you expect in an e-mail  
19 production of the type requested here that the production of  
20 data would result in a linearity with respect to the data that's  
21 produced?  
22 MR. SOROKIN: Right, especially according to  
23 e-mails.  
24 MR. DRIVON: And a verticality; is that correct.  
25 MR. SOROKIN: Yes, which means each person that  
26 received that e-mail should also have a copy of it.  
27 MR. DRIVON: Okay, that's the plain way of saying  
0012 it.  
01 MR. SOROKIN: Correct.  
02 MR. DRIVON: The next slide shows us what?  
03 MR. SOROKIN: This is an overview.  
04 MR. DRIVON: Okay, the overview that you're  
05

06 trying to say is that in the next few slides, you're going to  
 07 show us that in your opinion, based on your training,  
 08 experience, and examination of the data, there was tampering,  
 09 destruction, and obstruction; is that correct?  
 10 MR. SOROKIN: Correct.  
 11 MR. DRIVON: The next slide details some of what  
 12 you found that indicated to you that, in your professional  
 13 opinion, that the data had been tampered with?  
 14 MR. SOROKIN: Correct.  
 15 MR. DRIVON: Now, something here called long file  
 16 names. We don't want to get into a lot of technical stuff here,  
 17 multiple operating systems having been used.  
 18 It wouldn't be unusual for a large corporation to  
 19 use more than one operating system; would it?  
 20 MR. SOROKIN: No, but not during the data  
 21 gathering process. That's not normal.  
 22 MR. DRIVON: I see. In other words, during the  
 23 process, you were able to determine that during the process of  
 24 gathering these data, different operating systems had been used?  
 25 MR. SOROKIN: Correct.  
 26 MR. DRIVON: So, that was of interest to you?  
 27 MR. SOROKIN: Correct.  
 28 MR. DRIVON: Now, you have explained to me a  
 0013 couple of times -- and I think we can move to the next slide --  
 01 something having to do with long file names?  
 02 MR. SOROKIN: Correct.  
 03 MR. DRIVON: And something to do with the fact  
 04 that if a long file name is requested by the search, but the  
 05 long file name document is inside a short file name document, it  
 06 disappears, essentially.  
 07 MR. SOROKIN: It's almost not possible. If you  
 08 have a long file name document inside of a short file name  
 09 folder, they were obviously not created at the same time.  
 10 MR. DRIVON: And that's of interest in a forensic  
 11 analysis?  
 12 MR. SOROKIN: Correct. That's an anomaly.  
 13 MR. DRIVON: And most folders contain the same  
 14 information. What do you mean by that?  
 15 MR. SOROKIN: In the two labeled folders Ken Lay  
 16 1 and Ken Lay 2, at the top, they contained similar files that  
 17 were copied to subfolders of each one of those folders, which I  
 18 can show.  
 19 MR. DRIVON: In other words, duplicate  
 20 information was included?  
 21 MR. SOROKIN: Yeah, copies of the same  
 22 information was put into individual folders.  
 23 MR. DRIVON: Okay. What did that tell you, in  
 24 simple terms?  
 25 MR. SOROKIN: In plain terms, to provide bulk.  
 26 MR. DRIVON: To provide bulk?  
 27 MR. SOROKIN: Yes.  
 0014 MR. DRIVON: Now, I guess we can move to the next  
 01 slide.  
 02 MR. SOROKIN: Yeah. Which one do you want to do?  
 03 MR. DRIVON: That's the last one; isn't it?  
 04 MR. SOROKIN: Yeah. I didn't know you were  
 05 ready.  
 06 MR. DRIVON: I guess we can move to the next  
 07 slide.  
 08 All right, what does this slide tell us?  
 09 MR. SOROKIN: From the information provided and  
 10 the document recovered from the material, they had performed the  
 11 acquisition of the files using search restrictions of key words.  
 12

13 MR. DRIVON: Are you familiar with a technique  
 14 whereby the accumulation of information can be limited by how  
 15 you ask the question?  
 16 MR. SOROKIN: Correct.  
 17 MR. DRIVON: Is that what you're trying to tell  
 18 us here?  
 19 MR. SOROKIN: Computers are very specific. You  
 20 have to ask specifically what you're looking for, and only that  
 21 specific information will be provided.  
 22 MR. DRIVON: If you want to ask a question about  
 23 dogs, and it's going to contain a color, it's only going to give  
 24 you yellow dogs if that's what you asked for?  
 25 MR. SOROKIN: That's correct.  
 26 MR. DRIVON: And red dogs are going to be gone.  
 27 MR. SOROKIN: That is correct.  
 28 MR. DRIVON: Now, you say that there were search  
 0015 restrictions. And as I understand it from what you've said, the  
 01 search was restricted to the use of four words, at least for  
 02 this particular production. Those words being: California,  
 03 electric, natural gas, and pipeline; correct?  
 04 MR. SOROKIN: Correct. I would like to make a  
 05 statement.  
 06 According to their documentation, there was an  
 07 error on even their document, where they actually used the words  
 08 natural gas, but in some cases documented the word gas. So,  
 09 that's on I don't know which.  
 10 MR. DRIVON: Keep speaking upper.  
 11 MR. SOROKIN: Okay, I'm sorry.  
 12 In cases, they had documented that the word gas  
 13 was used, and then some cases natural gas.  
 14 MR. DRIVON: Okay. If one wanted to further  
 15 restrict the results of a search, say you wanted to use these  
 16 four words, but you wanted to restrict the results of this  
 17 search, you could do that by telling the computer to recognize  
 18 only upper or lower case; right?  
 19 MR. SOROKIN: Correct.  
 20 MR. DRIVON: That would be one strategy for  
 21 further reducing the production.  
 22 MR. SOROKIN: Correct.  
 23 MR. DRIVON: Was that done here?  
 24 MR. SOROKIN: Yes.  
 25 MR. DRIVON: And tell us what was done.  
 26 MR. SOROKIN: There was document recovered that a  
 27 specific search was done specifying case-sensitive search.  
 28  
 0016 MR. DRIVON: One of the documents that you were  
 01 able to extract from this production showed you that their  
 02 search had been limited by case-specific instruction; correct?  
 03 MR. SOROKIN: Correct. I'd like to make a note  
 04 that by the operating system's default, that is not default;  
 05 that has to be selected.  
 06 MR. DRIVON: In other words, you can't say the  
 07 program made me do it?  
 08 MR. SOROKIN: Correct.  
 09 MR. DRIVON: You've got to do it yourself.  
 10 MR. SOROKIN: You have to check the box.  
 11 MR. DRIVON: And that box was checked, and the  
 12 document that you dug out of this information?  
 13 MR. SOROKIN: Correct.  
 14 MR. DRIVON: Now, in looking at this information,  
 15 when I open an e-mail, you know, I see "From," "To," "Subject,"  
 16 and then whatever it's all about.  
 17 When you, as a forensic expert, look at that same  
 18 e-mail, you are in most cases able to discover a lot more

20 information; correct?  
 21 MR. SOROKIN: Very often we open the files in raw  
 22 mode, which is raw. And it's hexadecimal.  
 23 MR. DRIVON: What's hexadecimal?  
 24 MR. SOROKIN: It's a numbering system, base 16,  
 25 that computers use to store information.  
 26 MR. DRIVON: That's all right. I'm sorry I  
 27 asked.  
 28 In other words, part of what you do as a forensic  
 0017 analyst in these kinds of things is look beyond the surface to  
 01 get to the data which are embedded by the computer systems;  
 02 correct?  
 03 MR. SOROKIN: Yes. That term is known as meta  
 04 data.  
 05 MR. DRIVON: Meta data?  
 06 MR. SOROKIN: Correct. And it's in the numerical  
 07 form, which means I look at the document in numbers, instead of  
 08 text as you would see.  
 09 MR. DRIVON: And that can tell you, for instance,  
 10 not only whose personal computer it was done on, but what path  
 11 it took, what server it visited, how it was relayed, how it was  
 12 compressed, how it was decompressed, where it wound up, who got  
 13 copies of it.  
 14 MR. SOROKIN: How many times it was edited.  
 15 MR. DRIVON: How many times it was edited, what  
 16 time it was edited, on what computer it was edited.  
 17 MR. SOROKIN: Correct.  
 18 MR. DRIVON: And sometimes you're able to  
 19 actually extract information that was put there that gives you  
 20 data on what was on the computer of somebody who might have  
 21 compiled this?  
 22 MR. SOROKIN: That is correct.  
 23 MR. DRIVON: As a matter of fact, that happened  
 24 here; didn't it?  
 25 MR. SOROKIN: Yes, additional information is  
 26 usually included that's not visible.  
 27 MR. DRIVON: What's the next slide tell us?  
 0018 MR. SOROKIN: This is a review of the prior  
 01 statement where in the folders there were copies of files that  
 02 were similar.  
 03 All the colored bars are exact duplicates of all  
 04 the files that were put into additional folders. So, if you  
 05 take the California folder, the same colors were found in  
 06 pipeline and electric and natural gas. The same files.  
 07 MR. DRIVON: So, the net result of that is that 9  
 08 or 10 CDs of data, which became two-thirds of one CD of data,  
 09 became much less than two-thirds of one CD of data because a lot  
 10 of it was the same stuff?  
 11 MR. SOROKIN: Correct.  
 12 MR. DRIVON: And in addition to that, if I  
 13 understand what you've told me before, the data that were  
 14 included, included such things as README files, which are  
 15 instructions from some computer program telling somebody how to  
 16 do something.  
 17 MR. SOROKIN: Correct.  
 18 MR. DRIVON: Having nothing to do with the energy  
 19 crisis in California.  
 20 MR. SOROKIN: Correct.  
 21 MR. DRIVON: And other miscellaneous data that is  
 22 basically irrelevant verbiage?  
 23 MR. SOROKIN: Correct.  
 24 MR. DRIVON: I don't want to get the first part  
 25 of that word wrong.  
 26

27 So this slide just tells us how that was done in  
 28 this situation?  
 0019  
 01 MR. SOROKIN: Correct.  
 02 MR. DRIVON: The next slide.  
 03 MR. SOROKIN: This is the actual document that  
 04 was recovered that specified their search parameters.  
 05 MR. DRIVON: Okay, and this particular document  
 06 then, where are we with being able to blow up parts of this?  
 07 Okay, I understand where we are.  
 08 In the lower left-hand corner --  
 09 MR. SOROKIN: Yes. I have a pointer that I can  
 10 use.  
 11 MR. DRIVON: And that says, for those without  
 12 vision that I have, it says, "case sensitive;" is that correct?  
 13 MR. SOROKIN: That is correct.  
 14 MR. DRIVON: That's what we talked about a minute  
 15 ago, a strategy for limiting the volume of production?  
 16 MR. SOROKIN: Correct.  
 17 MR. DRIVON: So, for instance, if I asked it for  
 18 all of the documents having to do with California, and a  
 19 document just said CA, it won't show up?  
 20 MR. SOROKIN: That is correct.  
 21 MR. DRIVON: It just skipped it?  
 22 MR. SOROKIN: It would be avoided.  
 23 MR. DRIVON: And if it said Cal, it would be  
 24 avoided?  
 25 MR. SOROKIN: Correct.  
 26 MR. DRIVON: And if it happened to say  
 27 California?  
 28 SENATOR BOWEN: How about if it said Malin, which  
 0020  
 01 is the delivery point in California?  
 02 MR. DRIVON: That would be a different universe,  
 03 not just a different word.  
 04 No, the point is, even if it said California, but  
 05 maybe they capitalized the first two letters instead of the  
 06 first letter, you avoid it.  
 07 MR. SOROKIN: Right.  
 08 MR. DRIVON: Didn't have any capitalization at  
 09 all, avoid it.  
 10 MR. SOROKIN: Only specific searches using  
 11 case-sensitive would only be produced.  
 12 MR. DRIVON: And as Senator Bowen says, it would  
 13 have nothing to do with -- the computer is not being asked to do  
 14 any sort of intuitive look at this data. So, if you're talking  
 15 about Malin, which is a point that's associated with California,  
 16 to the computer, it might as well be Greek?  
 17 MR. SOROKIN: That is correct.  
 18 MR. DRIVON: Let's look at the next slide.  
 19 Search Restrictions, okay, we've covered this, I think.  
 20 Destruction. Let's talk about this slide a  
 21 little bit. If I understand it correctly, you were able to  
 22 identify documents that had the data within that document or  
 23 documents destroyed; is that correct?  
 24 MR. SOROKIN: Correct.  
 25 MR. DRIVON: All right. And this slide tells us,  
 26 uses a term "zeroed out". What does that mean?  
 27 MR. SOROKIN: In the reference to the numbering  
 28 system, the file contained no meta data; it contained 100  
 0021  
 01 percent zeros.  
 02 MR. DRIVON: This was a 20.5 megabyte e-mail  
 03 file?  
 04 MR. SOROKIN: It was labeled such.

05 MR. DRIVON: When you say labeled such, that was  
06 part of the data that --  
07 MR. SOROKIN: Right. It was labeled an e-mail  
08 file, but since it contained no e-mail information, it is not an  
09 e-mail file.  
10 MR. DRIVON: But the amount of data contained  
11 that was wiped out was 20.5 megabytes?  
12 MR. SOROKIN: Correct.  
13 MR. DRIVON: And that's equivalent to how many  
14 diskettes?  
15 MR. SOROKIN: About 18 -- a little bit, 15 to 18  
16 floppies.  
17 MR. DRIVON: So a stack of floppies this high?  
18 MR. SOROKIN: Correct.  
19 MR. DRIVON: And ordinary e-mails that might be,  
20 if that was one e-mail, can you give me some kind of guess as to  
21 how many might be --  
22 MR. SOROKIN: Thousands.  
23 MR. DRIVON: Thousands?  
24 MR. SOROKIN: Correct.  
25 MR. DRIVON: And this contained no usable data  
26 whatsoever; correct?  
27 MR. SOROKIN: None, correct.  
28 MR. DRIVON: Let's look at, the next slide tells  
0022  
01 us a little something about what you're talking about; doesn't  
02 it?  
03 MR. SOROKIN: This is the visualization of the  
04 inside of that file.  
05 MR. DRIVON: So, you filleted this file, and this  
06 is what it looked like on the inside?  
07 MR. SOROKIN: Correct.  
08 MR. DRIVON: And when you say zeroed out, you're  
09 talking about all those little things you've got over there on  
10 the side; right?  
11 MR. SOROKIN: Right.  
12 MR. DRIVON: Now, if these data were produced  
13 pursuant to a search that identified only key words, okay?  
14 MR. SOROKIN: Okay.  
15 MR. DRIVON: I mean, your understanding is that  
16 somebody went out to the computer network and said, "Find every  
17 document that's got these words in it."  
18 MR. SOROKIN: Correct.  
19 MR. DRIVON: And you also found some information  
20 that they required the use of multiple or combinations of words,  
21 so that even if it said California, it might be ignored if it  
22 didn't also include pipeline?  
23 MR. SOROKIN: Right, sequential searches. There's  
24 evidence of sequential searches being performed on the  
25 originally produced information of the first search parameter.  
26 So, it would seem that the searches were done in sequence to  
27 further remove or to reduce information.  
28 MR. DRIVON: Further avoidance?  
0023  
01 MR. SOROKIN: Okay.  
02 MR. DRIVON: I just picked up a word you used  
03 before.  
04 MR. SOROKIN: Yes, it would avoid information  
05 that was not part of the search parameters.  
06 MR. DRIVON: Answer this question, too, for me,  
07 sir. If I asked these computers to produce only data that  
08 contained at least one of the four words, how would it produce  
09 data that had nothing in it?  
10 MR. SOROKIN: It would not.  
11 MR. DRIVON: All right. Does that tell us, then,

12 that this particular material was somehow altered after the  
 13 search was performed?  
 14 MR. SOROKIN: Correct.  
 15 MR. DRIVON: Now, the next question is, is this  
 16 sort of thing, that is to say, the zeroing out of these data, is  
 17 that something that just happens with a computer program?  
 18 MR. SOROKIN: Very improbable.  
 19 MR. DRIVON: I understand that you're a very  
 20 precise man.  
 21 MR. SOROKIN: Correct.  
 22 MR. DRIVON: You say very improbable.  
 23 MR. SOROKIN: Very improbable. Most files, even  
 24 when -- if they have a mistake in their creation, will contain  
 25 some sort of information up until the point of that mistake.  
 26 MR. DRIVON: Let me try to ask it this way.  
 27 In your career, have you ever seen a document  
 28 such as this created by accident?  
 0024  
 01 MR. SOROKIN: Not of this size, no.  
 02 MR. DRIVON: So then, to sum this point up, this  
 03 tells us that a document, or series of documents, a whole bunch  
 04 of e-mails, if that's what they were, 15 to 18 floppy disks'  
 05 worth of material, was identified by the search parameters,  
 06 compiled in some fashion, and then altered or tampered with in  
 07 such a way as to eliminate the data that was there and  
 08 further -- and act as a further mechanism for avoidance.  
 09 MR. SOROKIN: Correct.  
 10 MR. DRIVON: Did I say it right?  
 11 MR. SOROKIN: Yes.  
 12 MR. DRIVON: That's amazing.  
 13 The next slide shows us what?  
 14 The Chairman's note says, "Can we speed up?" I  
 15 said I'll try.  
 16 CHAIRMAN DUNN: Peter, it's not your fault.  
 17 MR. SOROKIN: That's a lot of information, sir.  
 18 MR. DRIVON: The next slide says that you  
 19 observed that we were given copies of original CDs, and that had  
 20 some significance to you; is that correct?  
 21 MR. SOROKIN: Correct.  
 22 MR. DRIVON: Why is that significant?  
 23 MR. SOROKIN: It gives an additional point in  
 24 between the process of the creation and the delivery that could  
 25 be brought into question.  
 26 MR. DRIVON: Could result in either the denial of  
 27 certain -- the availability of certain meta data or tags, and  
 28 provide an additional opportunity to avoid the production of  
 0025  
 01 additional documents.  
 02 MR. SOROKIN: Additional meta data was produced.  
 03 MR. DRIVON: So, this acted, then, as another  
 04 filter or could have?  
 05 MR. SOROKIN: Correct.  
 06 MR. DRIVON: The next slide, that one's easy to  
 07 understand.  
 08 MR. SOROKIN: That's the original CD that was  
 09 provided.  
 10 MR. DRIVON: That is an actual copy of the  
 11 original CD that was provided?  
 12 MR. SOROKIN: Right.  
 13 MR. DRIVON: Then the next slide shows what?  
 14 MR. SOROKIN: That actually is the CD that  
 15 contained the zero file, and then a replacement CD was produced  
 16 after that damaged CD was -- or that file was observed, and the  
 17 replacement CD showed up on the right, which contained an  
 18 entirely different look, which is inconsistent with the

19 originally produced CDs.  
20 MR. DRIVON: Okay, so your understanding was, we  
21 let them know that these destroyed data were there. They took a  
22 shot at giving us something different.  
23 MR. SOROKIN: They tried to replace the data.  
24 MR. DRIVON: Did they replace the data?  
25 MR. SOROKIN: Not in my opinion.  
26 MR. DRIVON: And your opinion, of course, based  
27 on your training, skill, expertise, experience, equipment you  
28 used, look at this, et cetera, et cetera, et cetera --  
0026 MR. SOROKIN: Correct.  
01 MR. DRIVON: -- showed that this was not the  
02 providing of the information that had been zeroed out before?  
03 MR. SOROKIN: No, the files had different names  
04 and were of different sizes.  
05 MR. DRIVON: I mean, if you duplicate a  
06 particular computer file within certain --  
07 MR. SOROKIN: After a search has been done, that  
08 file should be exact.  
09 MR. DRIVON: So, in your opinion, this did not  
10 result in telling us what had been destroyed on the other CD?  
11 MR. SOROKIN: That is correct.  
12 MR. DRIVON: The next CD tells us what?  
13 MR. SOROKIN: Are you talking about the one on  
14 the screen.  
15 MR. DRIVON: That one.  
16 MR. SOROKIN: Okay. This one --  
17 MR. DRIVON: This is more of a professional  
18 comment.  
19 MR. SOROKIN: Well, it was interesting to see  
20 that the company performing some of the forensics was actually  
21 the company that was being requested from. That's an unusual  
22 process. Usually an outside party does that process.  
23 MR. DRIVON: In other words, these data that  
24 we're being given, this particular slide shows us a scan of the  
25 actual disk and the printing that was on the disk, and shows us  
26 that these data had been through Enron Net Works, LLC,  
27 Information Technology Security and Controls, and their forensic  
0027 team before it came to us?  
01 MR. SOROKIN: That is correct.  
02 MR. DRIVON: The next slide just tells us that  
03 there were a thousand -- the difference in size was of a  
04 thousand bytes?  
05 MR. SOROKIN: No, it was approximately 49k, or  
06 49,000 bytes -- bits, I'm sorry, 49 bytes, 49,000 bits.  
07 MR. DRIVON: So, the first one was 21,594,112.  
08 They replaced it with 21,544,960. And your take on that is,  
09 close but no cigar.  
10 MR. SOROKIN: Correct.  
11 MR. DRIVON: The next just says that you observed  
12 there were conditions of purge reference in the provided files.  
13 MR. SOROKIN: In the meta data, there is  
14 references to purging.  
15 MR. DRIVON: Okay, the meta data are these extra  
16 computer tags that get put on that are interesting to forensic  
17 analysis people like yourself.  
18 MR. SOROKIN: Correct.  
19 MR. DRIVON: And these showed you that there was  
20 evidence that certain files had been purged?  
21 MR. SOROKIN: There is a condition of purging  
22 that exists.  
23 MR. DRIVON: The next shows us what?  
24 MR. SOROKIN: This is the actual inside of the  
25

26 file that contains the reference to the purging.  
 27 MR. DRIVON: Okay. I'll leave that for others.  
 28 The next slide, you observed that e-mail evidence  
 0028  
 01 was being deleted?  
 02 MR. SOROKIN: Correct.  
 03 MR. DRIVON: And let me guess. The next slide  
 04 shows us what you based that on?  
 05 MR. SOROKIN: That is correct.  
 06 MR. DRIVON: Give us, you know, the 10-second on  
 07 this one.  
 08 MR. SOROKIN: The 10-second view is in the  
 09 different people's CD who are referenced in the "Sent To" e-mail  
 10 portion. The e-mail appeared in one mail box but not another.  
 11 So, that showed that that e-mail had been removed from the second  
 12 person who should have been there.  
 13 CHAIRMAN DUNN: Senator Bowen.  
 14 SENATOR BOWEN: Thank you.  
 15 Much of what you said I understand, but this one  
 16 doesn't necessarily seem to me that it's evidence of anything.  
 17 It sort of depends on what the individual policy of the  
 18 recipient is in terms of whether they --  
 19 MR. SOROKIN: If the same request had been made  
 20 to the same people that are on this list, the same information  
 21 should have been produced.  
 22 SENATOR BOWEN: No, but what I'm saying to you is  
 23 that in my office, if I get from staff an e-mail directed to ten  
 24 different people, half six months later will have it, and the  
 25 other half won't. And it's just personal preference as when  
 26 things gets deleted.  
 27 MR. SOROKIN: I believe that these -- during the  
 28 term of this e-mail that they were under subpoena.  
 0029  
 01 SENATOR BOWEN: Okay, thank you. That's what I  
 02 was trying to get.  
 03 MR. DRIVON: The next slide tells us what?  
 04 MR. SOROKIN: This is another e-mail that was  
 05 recovered from the documents that had been sent to many  
 06 recipients, noticing them that if their mailboxes filled to  
 07 capacity, to go ahead and delete e-mails.  
 08 MR. DRIVON: And the date of this is October  
 09 19th, 2001?  
 10 MR. SOROKIN: Correct.  
 11 MR. DRIVON: In other words, on that date these  
 12 folks -- Linnell, Elizabeth; Pardillo, Joy -- were being told  
 13 that they should delete e-mail?  
 14 MR. SOROKIN: Right, if their mailboxes had  
 15 exceeded their size limits, and to go ahead and start removing  
 16 documents that were no longer -- to relieve the congestion.  
 17 MR. DRIVON: And just for the edification of the  
 18 committee, it is my memory that the subpoenas were issued by  
 19 this committee in June of 2001, and we had been assured on a  
 20 number of occasions that there would be no destruction of any of  
 21 the data.  
 22 CHAIRMAN DUNN: Just for completeness, though, as  
 23 most everyone knows, we were given that assurance time and time  
 24 again, but when we asked each of the market participants to sign  
 25 a document, nondestruct agreement, to this day, every single one  
 26 refuses.  
 27 MR. DRIVON: What this shows us is that these  
 28 data were deleted from these files after the date of the  
 0030  
 01 subpoena, assuming the subpoena was June; correct?  
 02 MR. SOROKIN: Correct.  
 03 MR. DRIVON: What's next?

04 MR. SOROKIN: Also in relation to the mailbox  
05 deletion reference, there was vastly different sizes of  
06 mailboxes of the people that were under subpoena. There was not  
07 consistent size of mailboxes to retain the information.  
08 MR. DRIVON: Okay. Next.  
09 MR. SOROKIN: The next one is an e-mail that was  
10 recovered that informed the recipients to access information  
11 that was located on a third-party website that was protected by  
12 security.  
13 MR. DRIVON: In other words, certain of the data  
14 were deposited on a remote website that was not a part of  
15 Enron's --  
16 MR. SOROKIN: That is correct.  
17 MR. DRIVON: -- data network?  
18 MR. SOROKIN: That is correct.  
19 MR. DRIVON: Is it your understanding that data  
20 that was put in that particular storage location would not have  
21 been produced?  
22 MR. SOROKIN: That is correct.  
23 MR. DRIVON: And this particular data storage  
24 facility or website was password protected; is that correct?  
25 MR. SOROKIN: Yes, with a strong encryption.  
26 MR. DRIVON: And you picked this information  
27 up --  
28 MR. SOROKIN: From the e-mail.  
0031  
01 MR. DRIVON: From some of this special data  
02 that's on this e-mail?  
03 MR. SOROKIN: Correct.  
04 MR. DRIVON: At the bottom here, you say -- you  
05 go back over it and say, removal of relevant material,  
06 intentional search restrictions, and evidence of the use of  
07 strong encryption.  
08 MR. SOROKIN: Correct. Is that the prior one or  
09 the following?  
10 MR. DRIVON: That one, yes.  
11 MR. SOROKIN: Okay.  
12 MR. DRIVON: Having shown how far behind I can  
13 get, let's move to the next slide.  
14 MR. SOROKIN: This is their actual e-mail of the  
15 California Solutions website that was being used to store  
16 information relating to California.  
17 MR. DRIVON: That was my next question. This  
18 website that they were using to store information off their  
19 computers, and therefore out of sight of the data searches that  
20 were done for us --  
21 MR. SOROKIN: Right, on another company.  
22 MR. DRIVON: -- had to do specifically with  
23 California; is that correct?  
24 MR. SOROKIN: Very specifically, according to the  
25 e-mail.  
26 MR. DRIVON: And the next slide. If we go to the  
27 first paragraph, it says, if anyone can't read it from back  
28 there,  
0032  
01 "Attached is a link to Enron's  
02 California Solutions website.  
03 It is a secure place on the web  
04 that we can use to share  
05 resources and keep track of our  
06 efforts to manage the energy  
07 crisis in California, New York,  
08 Washington, DC and the West.  
09 At this site you will find ..."  
10 and then it goes through a list of everything that they've got

11 there, including Enron Position Papers, a library of documents  
 12 addressing the energy crisis, announcements, updates, and a  
 13 place for people to post messages, carry on electronic  
 14 conversations concerning this, et cetera, et cetera. Is that  
 15 correct?  
 16 MR. SOROKIN: That is correct.  
 17 MR. DRIVON: This particular e-mail alerting  
 18 people to the availability of this website was sent Thursday,  
 19 June 21st, 2001.  
 20 MR. SOROKIN: That is correct.  
 21 MR. DRIVON: Correct?  
 22 MR. SOROKIN: Correct.  
 23 MR. DRIVON: I'm sorry, Senators. I do not have  
 24 the specific date that we served our subpoena. I'm being told  
 25 it was June 12th, nine days before this e-mail was sent.  
 26 The next slide.  
 27 MR. SOROKIN: This is the actual website where  
 28 the information was referencing.  
 0033  
 01 MR. DRIVON: You were able to gain access to this  
 02 website?  
 03 MR. SOROKIN: No, I was not. The files are no  
 04 longer there.  
 05 MR. DRIVON: So, whatever was there, and whatever  
 06 began to be put there nine days after our subpoena, is not there  
 07 any more?  
 08 MR. SOROKIN: Correct.  
 09 MR. DRIVON: And are you, as a forensic computer  
 10 expert, able to in some way recreate, find, or dredge up what  
 11 was on that website?  
 12 MR. SOROKIN: No, I'm not.  
 13 MR. DRIVON: Gone forever?  
 14 MR. SOROKIN: Unless they have tape backups.  
 15 MR. DRIVON: And of course, that question has  
 16 been asked.  
 17 MR. SOROKIN: Of Interliant? I think that  
 18 question is still pending.  
 19 MR. DRIVON: Interliant is a separate company?  
 20 MR. SOROKIN: As far as I know.  
 21 MR. DRIVON: What you're saying is, you don't  
 22 know that there is any direct connection.  
 23 MR. SOROKIN: I don't know what the relationship  
 24 of Interliant is to Enron.  
 25 MR. DRIVON: And this tells us that the  
 26 categories of people that had access included the lobbyists and  
 27 others; is that correct?  
 28 MR. SOROKIN: That is correct.  
 0034  
 01 MR. DRIVON: And this website itself was strongly  
 02 encrypted?  
 03 MR. SOROKIN: It used strong encryption, correct.  
 04 MR. DRIVON: Let's move on.  
 05 MR. SOROKIN: Just browsing through the log-in of  
 06 the screen. I'm on about four pages out.  
 07 MR. DRIVON: I got you. This just summarizes  
 08 what we've just talked about?  
 09 MR. SOROKIN: Correct.  
 10 MR. DRIVON: Move on to the next one.  
 11 MR. SOROKIN: This shows that the files are no  
 12 longer in place.  
 13 MR. DRIVON: So, you actually tried to go out  
 14 there and get this data, and it's gone?  
 15 MR. SOROKIN: Correct.  
 16 MR. DRIVON: Then the next slide shows us  
 17 examples of the case-sensitive search restriction?

18 MR. SOROKIN: Yes. To do that process, six steps  
19 are required.  
20 MR. DRIVON: So, you can't just slip and have  
21 this happen?  
22 MR. SOROKIN: No, it's very deliberate.  
23 MR. DRIVON: Deliberate.  
24 The next slide.  
25 MR. SOROKIN: This is a summary of the files that  
26 were produced using -- there's four search words.  
27 I'd also like to make mention that the files in  
28 their list were not provided in the forms in which they are  
0035 shown the their search results. The files shown contain the  
01 long file name; the files that were produced do not contain the  
02 long file name, so that the files have been --  
03 MR. DRIVON: Let me ask a really stupid question.  
04 MR. SOROKIN: Sure.  
05 CHAIRMAN DUNN: Which I just posed to him.  
06 MR. DRIVON: So what?  
07 MR. SOROKIN: It changes the meta data, so --  
08 and it changes the information.  
09 MR. DRIVON: Okay. Would an explanation for this  
10 be the implementation of a strategy that would be understood by  
11 a forensic IT person in order to complicate analysis of data?  
12 MR. SOROKIN: It was not a clean process,  
13 correct.  
14 MR. DRIVON: That's the way you guys would say  
15 what I just said?  
16 MR. SOROKIN: Right.  
17 CHAIRMAN DUNN: I'm sorry.  
18 You said it's an unclean process?  
19 MR. SOROKIN: It was not a clean process,  
20 correct.  
21 MR. DRIVON: So, it's a process where the  
22 situation is deliberately confused and made unclean in order to  
23 complicate recovery.  
24 MR. SOROKIN: That would seem the intent of the  
25 quantity of information received.  
26 MR. DRIVON: Is that a very precise way of saying  
27 yes?  
0036 MR. SOROKIN: Yes.  
01 MR. DRIVON: Thank you.  
02 The next slide shows us what?  
03 MR. SOROKIN: This is the example of a search  
04 done using an uppercase or a lowercase that specific words would  
05 not be included. We covered this earlier.  
06 MR. DRIVON: Next slide.  
07 MR. SOROKIN: This is reference in their e-mails  
08 that referenced a strong encryption.  
09 MR. DRIVON: So, strong encryption is a selected  
10 thing; correct?  
11 MR. SOROKIN: Correct.  
12 MR. DRIVON: In other words, the person who is  
13 using this e-mail would go through and be given a series of  
14 choices, like "No Encryption"?  
15 MR. SOROKIN: The technician would have to set  
16 the server up to do this.  
17 MR. DRIVON: Okay. But in any case, that not  
18 withstanding, through your efforts we were able to defeat the  
19 encryption most of the time here?  
20 MR. SOROKIN: Correct.  
21 MR. DRIVON: The next shows us that there were  
22 gaps in the times of provided materials, restricted amounts of  
23 data per person, included other irrelevant information, that the

25 original CDs were not provided, et cetera?  
 26 MR. SOROKIN: Correct.  
 27 MR. DRIVON: And the next CD?  
 28 MR. SOROKIN: Restricted amounts of information.

0037  
 01 This is a graphical pie chart of the percentage of information  
 02 produced by each person.  
 03 CHAIRMAN DUNN: Just read the names going around  
 04 that so we see what they are.  
 05 MR. SOROKIN: Okay. Ken Lay, 6 percent; Jeffrey  
 06 Skilling, 3.9 percent; Steven Kean, 12.1 percent; Richard  
 07 Shapiro, 5.9 percent; Sandi McCubbin, 6.3 percent; Jeff  
 08 Skilling, 41.8 percent; and e-mail KeyWord Search was 12.7  
 09 percent; and the Search Drive was 2 percent; and the DPR  
 10 Directory was 9.3 percent.  
 11 MR. DRIVON: So, the DPR Directory was 50 percent  
 12 bigger in the company than Ken Lay, I guess.  
 13 The next shows us what?  
 14 MR. SOROKIN: This shows the graph of timelines  
 15 of e-mails that were received.  
 16 MR. DRIVON: All right. So, in other words, this  
 17 shows us that, for instance, if we go to the bottom,  
 18 Mr. Skilling had the longest timeline for e-mails?  
 19 MR. SOROKIN: He only had 65 e-mails in that  
 20 timeline.  
 21 MR. DRIVON: So, he covered a lot of time, but  
 22 not much material?  
 23 MR. SOROKIN: That is correct.  
 24 MR. DRIVON: That was from June of 2000 through  
 25 March or so of 2002?  
 26 MR. SOROKIN: Correct.  
 27 MR. DRIVON: And Mr. Lay, how much was provided  
 28 from Mr. Lay prior to November 28th of 2001?

0038  
 01 MR. SOROKIN: No information.  
 02 MR. DRIVON: No information at all?  
 03 MR. SOROKIN: None.  
 04 MR. DRIVON: Have you received information at all  
 05 that one of the explanations was that for space reasons,  
 06 capacity balancing reasons, some information may have not shown  
 07 up here?  
 08 MR. SOROKIN: Okay, are you referencing the  
 09 e-mail mailboxes?  
 10 MR. DRIVON: I remember being told at some point  
 11 that part of the reason for not having gotten everything over  
 12 all of the period of time for everybody was because certain data  
 13 were changed from one server to another in order to balance the  
 14 load within the servers, et cetera?  
 15 MR. SOROKIN: Yes, and also to perform the  
 16 required search specifics that the Senate had requested.  
 17 MR. DRIVON: But in any case, this shows us that  
 18 for most of these folks whose data was searched, we were not  
 19 provided data for the entire time period we asked for.  
 20 MR. SOROKIN: That is correct.  
 21 MR. DRIVON: For Mr. Lay, we got a grand total of  
 22 18 e-mails?  
 23 MR. SOROKIN: That is correct. Even the  
 24 replacement CD did not produce much information from the zeroed  
 25 out file.  
 26 MR. DRIVON: The next slide tells us what?  
 27 MR. SOROKIN: Are you on this one?  
 28 MR. DRIVON: Yeah.

0039  
 01 MR. SOROKIN: With the replacement CD, of the  
 02 10th CD from Enron Net Works, LLC, that approximately two months

03 of information were produced with only 278 e-mails.  
04 MR. DRIVON: And the next slide basically just  
05 recaps.  
06 MR. SOROKIN: Correct.  
07 MR. DRIVON: And the next slide?  
08 MR. SOROKIN: This is the README file that was  
09 included.  
10 MR. DRIVON: Okay. So, this is just useless  
11 data?  
12 MR. SOROKIN: Yeah, I was just showing an example  
13 of the types of information which were included.  
14 MR. DRIVON: And the next slide having to do with  
15 Northwind is the same thing?  
16 MR. SOROKIN: It is a sample database.  
17 MR. DRIVON: In other words, the data we were  
18 provided included a sample database that would be used to show  
19 somebody how to use a computer program that's not even involved  
20 in this.  
21 MR. SOROKIN: That is correct.  
22 This is another sample database.  
23 MR. DRIVON: Okay.  
24 MR. SOROKIN: This is a graphical representation  
25 of all the CDs that were produced and the difference between  
26 them  
27 MR. DRIVON: All right.  
28 The next one again recaps for us?  
0040  
01 MR. SOROKIN: Correct.  
02 MR. DRIVON: And the next one just I guess --  
03 MR. SOROKIN: That shows the files that were  
04 produced during the copy process. Additional meta data was  
05 included.  
06 And this shows the consistency of the meta data  
07 that shows all the same information was included on all the CDs,  
08 which shows us it was done on one machine.  
09 MR. DRIVON: If I understand it correctly,  
10 Mr. Sorokin, based on your training, skill, expertise, and a  
11 great number of hours -- how many hours did you spend on this?  
12 MR. SOROKIN: Over 300.  
13 MR. DRIVON: Over 300 hours analyzing these data.  
14 It is your opinion that the information that we were given was  
15 incomplete, had been tampered with, the searches had been overly  
16 restrictive, there had been significant avoidance with respect  
17 to the production of documents by restricting searches?  
18 MR. SOROKIN: Correct.  
19 MR. DRIVON: That some of the data had been  
20 obliterated or destroyed?  
21 MR. SOROKIN: Correct.  
22 MR. DRIVON: Is that correct so far?  
23 MR. SOROKIN: Yeah.  
24 MR. DRIVON: And that all of these, you tested  
25 each of these opinions to see whether or not they would have  
26 been consistent with some sort of innocent activity; correct?  
27 MR. SOROKIN: Correct.  
28 MR. DRIVON: And you were unable to confirm  
0041  
01 innocent activity in any of these areas; correct?  
02 MR. SOROKIN: That is not the direction that the  
03 data took.  
04 MR. DRIVON: That is not the direction that the  
05 data took.  
06 One further little thing, because I want to beat  
07 your chest for just a moment. I understand that there is a  
08 forensic organization in either Oregon or Washington that may  
09 have looked at some of these data; that is correct?

10 MR. SOROKIN: Possibly.  
 11 MR. DRIVON: And that's a big company?  
 12 MR. SOROKIN: I don't know.  
 13 MR. DRIVON: In any case, I understand that  
 14 recently you were called and asked how you do this?  
 15 MR. SOROKIN: Correct.  
 16 MR. DRIVON: And you reminded them of the fact  
 17 this was done in a proprietary way and you wouldn't tell them?  
 18 MR. SOROKIN: Correct.  
 19 MR. DRIVON: That's all I have.  
 20 CHAIRMAN DUNN: Senator Bowen? Senator Morrow?  
 21 Senator Johannessen?  
 22 SENATOR MORROW: First of all, I want to go on  
 23 record to say that I have never owned a computer, and now I  
 24 never will.  
 25 One question I had, I understand the gist of  
 26 everything. I may not be using your correct terminology, but it  
 27 struck me that you discovered that Enron were able to hide  
 28 certain information in safe houses or other secure --  
 0042  
 01 MR. SOROKIN: Off site places.  
 02 SENATOR MORROW: Were you able, or I mean, is  
 03 that within the capabilities of going to those off site places  
 04 and, for lack of better terms, and I don't mean to insult you if  
 05 you consider it that way, but to hack in?  
 06 MR. SOROKIN: That's not ethically a process that  
 07 is taken. Usually that's done through due process, which means  
 08 that you get the subpoena, you get the permission.  
 09 SENATOR MORROW: I see.  
 10 No more questions, Senator.  
 11 CHAIRMAN DUNN: Senator Johannessen? Senator  
 12 Bowen? No questions.  
 13 Peter, I'd like to thank you very much, both for  
 14 your work with the committee, as well as your presentation  
 15 today. I know from your perspective that trying to deal with a  
 16 bunch of politicians not the most enjoyable thing that one can  
 17 engage in, but we do appreciate very much your work.  
 18 I want to add on something I had said earlier to  
 19 make sure everybody understands that.  
 20 We brought this information to the attention of  
 21 Enron. We have been working with them since that time to  
 22 correct what we have found, and they have been cooperative from  
 23 that time. This is still an ongoing process, and if we need to  
 24 bring this back to the attention of the full committee, we will  
 25 of course do so in a fashion like today.  
 26 We felt it was important to bring this out, A,  
 27 not only to continue to make sure that the Enron process  
 28 continues, but we also want make sure every other entity,  
 0043  
 01 whether market participants, regulators, whatever the case may  
 02 be, in production of electronic data to this committee, please  
 03 rest assured that we know what you do, we know where you've  
 04 been. And the same sort of treatment that was done with respect  
 05 to examining the Enron data electronic data will also be  
 06 utilized in the production by other market participants,  
 07 regulators, and any other entity that's a focus of this  
 08 committee.  
 09 I do want to say one other thing. I know we have  
 10 press that are here today, and I suspect some would love to talk  
 11 with Peter about his testimony. That's not something we will  
 12 allow at this time, so please respect the committee's wishes in  
 13 that regard, and let us end this part of the testimony.  
 14 What I'd like to do, Evelyn, are you okay for  
 15 about another 10 minutes? What I'd like to do is, do the Edison  
 16 compliance review, then take a short break and get into the

17 LADWP, Redding, et cetera, issues that are issues three and  
18 four.  
19 MR. DRIVON: Let me add one point here.  
20 First of all, I would like to add my personal  
21 thanks to you for what you've done. You've enabled me to do my  
22 job in a much better way.  
23 I would also like to inform the committee that we  
24 have now an agreement with Enron that they will provide us full,  
25 unfettered access to their entire database of information. We  
26 are working with them, and it's difficult for me to imagine a  
27 more open and accessible position. I don't think they could go  
28 any farther than they've now agreed to go. So, thank you.

0044  
01 CHAIRMAN DUNN: And I have to confess that, given  
02 where we were a year ago with respect to Enron, it's a nice  
03 change.  
04 Senator Bowen?  
05 SENATOR BOWEN: Before Mr. Drivon leaves, I guess  
06 my question would be, do we have a nondestruct agreement signed  
07 by Enron or any of the other market participants, now that we've  
08 seen what appears to be document destruction?  
09 MR. DRIVON: You mean in writing.  
10 SENATOR BOWEN: Yes, I mean in writing.  
11 MR. DRIVON: No.  
12 CHAIRMAN DUNN: To this day, Senator Bowen, no  
13 market participant, no entity that's been on the focus of our  
14 investigation has been willing to agree to a written nondestruct  
15 agreement.  
16 Peter, again, thank you very, very much.  
17 Let's just take 30 seconds to shuffle here.  
18 We're actually going to bring Larry down to sit  
19 next to you, and he's going to make his review, and then  
20 certainly welcome any input, comments from Southern California  
21 Edison.  
22 Let's move to this next issue. As I said to  
23 everybody, we expect it to be relatively short, then we'll take  
24 a short break, and then we'll come back for issues three and  
25 four on the agenda.  
26 Mr. Drivon, I think at this point now, Bob, we  
27 need your services.  
28 [Thereupon the witness,

0045  
01 LARRY DRIVON, swore to tell  
02 the truth, the whole truth,  
03 and nothing but the truth.]  
04 CHAIRMAN DUNN: Mr. Drivon, we are going to be  
05 hearing a lot from you today. I don't know if that's good news  
06 or bad news, but can you review for the committee where we are  
07 with respect to compliance via Edison and the committee's  
08 subpoena?  
09 MR. DRIVON: Yes, and let me start off by saying  
10 that we have continuing discussions with Edison on an  
11 accelerating basis, accelerating both in frequency, and in  
12 contact, and in level of company representative that we're  
13 dealing with. And I'll get back to that in a moment.  
14 But I do want to go over with the committee a  
15 little bit of what we've done with document compliance with  
16 Edison, because we have had some unfortunate missteps here along  
17 the way.  
18 On May 3rd of 2001, you and I, Senator, met with  
19 Gary Stern with respect to market compliance -- excuse me,  
20 market surveillance that might have been done by Southern  
21 California Edison. At that time we were told -- and the meeting  
22 covered other things, but we were told that there was market  
23 surveillance that had been done. We were interested in that

24 because it would help show us what others may have known.

25 Later we were told that there was no market  
26 surveillance that was done.

27 Now, we have received market surveillance  
28 information from Edison which we are currently beginning to

0046  
01 review.

02 So that, we are now consistent with the original  
03 position taken by Edison and inconsistent with the position they  
04 took in the middle.

05 We had subsequent meetings that involved Gary  
06 Stern, or at least were supposed to. Some of those meetings,  
07 one of those meetings in particular, I traveled to Southern  
08 California to attend a meeting with Mr. Stern. I managed to  
09 meet with Mr. Stern's lawyer and not Mr. Stern, but hopefully,  
10 we won't have those kinds of problems in the future. And we  
11 have been promised that we will have whatever access we need to  
12 whichever employees we feel the need to see.

13 On June the 8th of 2001, we sent a document  
14 request to Southern California Edison. On the 11th, they sent  
15 us a letter indicating that although they intended to cooperate,  
16 it was not possible to comply with the request.

17 Further, the letter stated that upon passage and  
18 implementation of legislation directed to the MOU and subsequent  
19 return of Southern California Edison to credit worthy status,  
20 that would be in a position to provide us with the documents.

21 As you may remember, at that time there were  
22 certain political things going on involving Edison's capacity to  
23 continue and its relationship with the state that, according to  
24 this letter, may have had something to do with our ability to  
25 get documents.

26 On September the 7th of 2001, we had had  
27 insufficient cooperation. We issued a subpoena for documents  
28 pertaining to market surveillance and the sale of generation

0047  
01 facilities, limiting the prior requests significantly, and  
02 focusing them more to help Edison with its time problems, if  
03 they had any.

04 And I would go forward to say that, for instance,  
05 with respect to market surveillance data, we asked for that data  
06 September 7th of 2001, and were provided with at least some of  
07 that data the day before yesterday.

08 On the 12th of September, we had a telephone  
09 conversation with Jim Woodruff, counsel for Edison, and  
10 committee counsel. He wanted an extension for compliance with  
11 the subpoena. He sent us a letter to that effect on the 14th of  
12 September. On the 20th of September, we sent him a letter  
13 telling him that we were not granting a one-week extension for  
14 the production of documents. The one-week extension that we did  
15 not grant him has now produced documents as of day before  
16 yesterday.

17 On September the 21st, he sent us a letter  
18 indicating a misunderstanding with respect to the conversations.  
19 On November 14th, they produced three boxes of data, of  
20 documents, to the committee, much of which was responsive to the  
21 original subpoena.

22 In early 2002, we had several discussions between  
23 committee staff and Victoria Schaefer, of Public Affairs at  
24 Edison, re: production of documents. On several occasions,  
25 after confirming with counsel, indicated that responsive  
26 documents would be forthcoming within days. Repeated requests  
27 regarding the status of those documents was made to them.

28 In April, on the 18th of 2002, they produced  
0048  
01 additional responsive documents. Mr. Woodruff indicated in a

02 phone conversation to the staff that they would be providing  
03 more documents, including those involving Mr. Stern, if a  
04 confidentiality agreement could be executed.

05 As of that time, as you know, Senator, we had  
06 hammered out confidentiality agreements that had been signed by  
07 virtually every market participant and was instantly available.  
08 It was not a problem. That was sent.

09 On May 30th of 2002, then, skipping forward, we  
10 sent a letter of interrogatories, requiring response within  
11 seven days.

12 On the 7th of June, we requested -- sent them a  
13 request regarding production of documents relating to Perot  
14 Systems.

15 In June of 2002, Mr. Ross called the committee  
16 staff, indicating the need for an extension to provide a  
17 response with respect to the letter of interrogatories. We  
18 indicated that we would request or pass that request on to you,  
19 Senator, and the others, but that it was unlikely it would be  
20 granted.

21 The reason for that tough position was, we have a  
22 situation, as you know, with Perot Systems that requires  
23 considerable preparation, and we need these documents.

24 We advised Mr. Ross that we had still not  
25 received the executed confidentiality agreement that we had sent  
26 to him a couple of months earlier.

27 On the 12th of June, they provided a response to  
28 the subpoena, including a privilege log. On the 12th, again a

0049

01 telephone conversation involving Mr. Woodruff, Mr. Ross,  
02 indicating the inadequacy of the privilege -- that doesn't make  
03 sense -- inadequacy of the privilege log and the continued lack  
04 of full production by Edison. They agreed to provide a more  
05 detailed privilege log to resolve any questions with respect to  
06 the attorney-client privilege claims, and to work with Mr. Stern  
07 to ensure complete production of responsive documents.

08 On the 20th of June, Perot Systems produced  
09 documents to the committee, including documents referencing  
10 meetings and presentations for Southern California Edison and  
11 Edison International.

12 On that very day, Edison issued a press release  
13 indicating that although Perot Systems approached Edison about  
14 market design issues, there was no value to them or their  
15 customers, and they weren't hired.

16 We then had, on the 24th, a call with Mr. Ross,  
17 Mr. Woodruff, Mr. Isken of Edison, indicating that they were  
18 working with Mr. Stern to produce the remaining responsive  
19 documents expeditiously.

20 As to Perot Systems, Mr. Isken indicated the  
21 committee's inquiry was to Southern California Edison, not  
22 Edison International. And Southern California Edison's response  
23 was specific to SCE and Perot Systems.

24 Documents pertaining to Perot Systems' partner,  
25 Policy Assessment Analysis, Mr. Bachus, relationship with Edison  
26 International were located and would be forthcoming.

27 Basically, they said they misunderstood the  
28 extent of what we were asking for, and that they would find that

0050

01 stuff and get it to us immediately.

02 The 24th of this month, just a few days ago, the  
03 committee sent a letter to Edison renewing its request for  
04 documents relating to Perot, Policy Assessment Corp, and SCE,  
05 any of its affiliates, subsidiaries, its parent company, or any  
06 other related entities.

07 The next day, we received additional material  
08 relating to Policy Assessment Corporation and Edison

09 International. Additionally, the committee has gained granted  
10 access to the website I previously talked about.  
11 So, as we can see from this chronology, what  
12 started out as being very slow, inadequate, and troubled  
13 response -- troubled from our standpoint -- response from Edison  
14 with respect to our request for information and cooperation,  
15 that was at that time inconsistent with what they were telling  
16 us verbally they were going to do, including assurances given to  
17 yourself, Senator, and myself personally, the trend with respect  
18 to their cooperation has been accelerating, as I indicated, both  
19 in quantity, quality, and in level of official in the company  
20 with whom we have been dealing.

21 So, I have considerable reason to believe that  
22 our relationship with Edison in this regard has improved, and  
23 will continue to improve, and we are pursuing the offers of high  
24 level cooperation within the company vigorously. And I hope to  
25 report even more progress in the future.

26 CHAIRMAN DUNN: Okay.

27 MR. WOODRUFF: Good afternoon. My name Jim  
28 Woodruff. I am the Jim Woodruff referred to by Mr. Drivon.

0051 I'm appearing on behalf of Southern California  
01 Edison Company to respond to any questions the committee has  
02 about the current state of Edison's compliance with the  
03 September 7th subpoena.

04 CHAIRMAN DUNN: No opening statement, just  
05 questions. You're just here for questions.

06 MR. WOODRUFF: I have no opening statement,  
07 Senator.

08 CHAIRMAN DUNN: Any questions from the committee  
09 members at all regarding the status of SCE's compliance?

10 Mr. Drivon, at this point in time are you making  
11 any recommendation to the committee that requires action by the  
12 committee?

13 MR. DRIVON: Senator Dunn, what I would recommend  
14 this committee do at this time would be to continue the question  
15 of compliance and the potential discussion with respect to  
16 contempt on the part of Edison, if any there be, to trail on  
17 July 11th, the hearing with Mr. Perot and the others.

18 CHAIRMAN DUNN: Okay, we will do that.

19 Our hope is, obviously, Jim, and I know, Tom,  
20 you're here as well, too, as you know, we've been frustrated  
21 along the way. We've appreciated the high level of cooperation  
22 most recently. Hopefully it continues and we can get this  
23 behind us. So, greatly appreciated for that action.

24 Jim, thank you very much.

25 Without anything further on the Edison compliance  
26 issue, that will be switched over to the 11th, if we have time  
27 to address it again, if necessary.

0052 And at this point, why don't we take about a  
01 five-minute break, and then we will start into the LADWP,  
02 Redding, et cetera, issues.

03 [Thereupon a brief recess  
04 was taken.]

05 CHAIRMAN DUNN: We will start.

06 If the Williams representative will come up and  
07 join Mr. Drivon at the witness table, it is would be greatly  
08 appreciated.

09 MR. SHOHET: Good afternoon.

10 CHAIRMAN DUNN: Good afternoon.

11 We're going to start this part of the agenda,  
12 item number three, relating to examination of responses to  
13 interrogatories by Williams and LADWP.

14 Let me give a little background, and we'll start

16 into Williams. What I'm really looking for from Williams is,  
17 I'm going to walk quickly through the history and what our  
18 concerns are, and open it up to the Williams individual for  
19 responses to that. I think we're going to give Mr. Drivon a few  
20 minute break here on the Williams side before we start into the  
21 LADWP side.

22 Let me give a little bit of background, and Bob,  
23 we'll get to you because from this point forward, we've got to  
24 swear everybody in. But let me give a little bit of background  
25 first.

26 As everybody is aware, weeks ago there was  
27 produced by Enron what are now considered the infamous Enron  
28 Memorandums, which listed certain market strategies that were

0053

01 employed by Enron in its behavior in the California energy  
02 market. When those were produced, our committee, and then  
03 subsequently FERC, turned around and issued interrogatories to  
04 many market participants, including municipals and others,  
05 asking in essence whether those entities engaged in any of the  
06 strategies that were identified in the Enron Memorandums: the  
07 Fat Boy, the Death Star, the Get Shorty type strategies.

08 Those that received those interrogatories to FERC  
09 and to our committee responded. We have a variety of different  
10 answers, some of which have been made public, some of which I  
11 believe still have not. Particularly at FERC, I think there are  
12 some that have not been.

13 We reviewed those answers to those  
14 interrogatories and did follow-up with respect to many of them.  
15 But let me get directly to Williams.

16 Our interrogatories to Williams following the  
17 production of the Enron memorandums were dated May 7th, I've got  
18 here. I just want to make sure. And we took a little different  
19 tack than FERC did. We asked whether they'd engaged in any of  
20 those strategies, and we identified each and every strategy, so  
21 it's a long set of questions, but also asked whether they were  
22 aware of any other market participants that engaged in those  
23 strategies, and also asked for the production of documents  
24 associated with either any market participant engaging in the  
25 behavior, or any other market participant they were aware of.

26 Let me use one as an example. For those that  
27 still have those documents, Page Three of the Enron Memorandums  
28 starts to discuss the various trading strategies. The first one

0054

01 is called "Export of California Power."

02 Our question 2a was.

03 "Did Williams engage in the  
04 conduct, acts, and strategies  
05 set forth in ..."

06 citing the paragraph --

07 "... Export of California  
08 Power, page 3 of the Enron  
09 Memorandum?"

10 The answer to that question from Williams, first  
11 in its FERC response, and the responses to FERC and the  
12 responses to us were under oath. Here is the response to FERC  
13 on the Export of California Power question:

14 "Based on its investigation,  
15 Williams is unable to admit or  
16 deny this request. Williams'  
17 scheduling records do not show  
18 any scheduled export with Cal PX  
19 as the source. Therefore,  
20 Williams is unable to identify  
21 any specific transactions that  
22 could fall within the description

23 of this particular practice."  
 24 They go on with a few other paragraphs, but basically the  
 25 answer is no.  
 26 The answer to our interrogatory that I read  
 27 before, the answer to that interrogatory to them from us is:  
 28 "Based on its investigation,

0055  
 01 Williams is unable to answer  
 02 this question yes or no, and on  
 03 that basis Williams' answer is no.  
 04 Williams' scheduling records do  
 05 not show any scheduled export  
 06 with the Cal PX as the source.  
 07 Therefore, Williams is unable to  
 08 identify any specific  
 09 transactions that could fall  
 10 within the description of this  
 11 particular practice."

12 In essence, very, very similar, if not identical,  
 13 to the response that Williams gave to FERC.

14 FERC then responded to the various answers that  
 15 were provided by a variety of market participants, and as most  
 16 of you are aware, issued an Order to Show Cause, dated June 4th  
 17 of 2002. FERC states in that Order to Show Cause at Page 4,  
 18 referencing Williams' response, quote:

19 "In responding to staff's  
 20 inquiry concerning export of  
 21 California power, Williams  
 22 claims that it is unable to  
 23 admit or deny whether it  
 24 engaged in this activity,  
 25 while conceding that  
 26 transactions may have been  
 27 made with expectation of  
 28 reselling at a higher price to

0056  
 01 buyers outside of California.  
 02 However, Williams does not  
 03 indicate that it took any steps  
 04 to ascertain the details about  
 05 such transactions."

06 And also a paragraph on Page 5 of the Order to  
 07 Show Cause by FERC:

08 "Finally, the Commission finds  
 09 that Williams' failure to  
 10 straightforwardly answer a  
 11 portion of the inquiry and to  
 12 seek further details about its  
 13 transactions represents an  
 14 unacceptable failure to  
 15 cooperate with staff's  
 16 investigation."

17 That Order to Show Cause resulted in a  
 18 supplemental response by Williams.

19 I should note that in answer to the answers  
 20 provided by other market participants on some of the strategies,  
 21 Ricochet, for example, I just have one of them here as an  
 22 example, PacifiCorp responds by identifying several companies  
 23 that it believes were involved, and it says:

24 "The counterparties in these  
 25 transactions were Aquila, Enron  
 26 Power Marketing, Sempra, and  
 27 Williams Energy Services  
 28 Company."

01 That is in the response to the FERC Interrogatories submitted by  
02 PacifiCorp, dated May 8th.

03 Williams then did provide a supplemental response  
04 to FERC based upon the Order to Show Cause, and with respect to  
05 the export, their supplemental response reads as follows:

06 "Williams did sell power at  
07 locations outside of California  
08 that was purchased and/or  
09 generated inside California  
10 during 2000-2001. Some of  
11 these sales were made because  
12 Williams was able to sell this  
13 power at a higher price outside  
14 of California than inside  
15 California. Williams' regular  
16 business practice is to seek  
17 the highest price available in  
18 the market. However, Williams  
19 as a practice did not make  
20 sales outside of California  
21 above the price cap."

22 Then they attached certain schedules.

23 With respect to the question regarding Death Star  
24 as its labeled by Enron, the supplemental response states in  
25 part:

26 "Williams did identify two  
27 transactions where Williams  
28 received a congestion payment

01 but power did not flow."

02 They also with respect to several of the other  
03 ones provided supplemental responses.

04 Now, the press, at least some press, have  
05 reported that as Williams reversing itself and, in fact,  
06 admitting to certain of the strategies.

07 We have looked at those answers in great detail,  
08 and we are concerned about Williams' original answer to our  
09 interrogatories, particularly in light of the supplemental  
10 responses filed to FERC. And of course, our concern, I've been  
11 very public about it, I'm sure much to the chagrin of many, that  
12 if in fact there was a direct change in the testimony, whether  
13 the original filings under penalty of perjury to this committee  
14 were in fact accurate.

15 So, what I'd like to do at this time, because I  
16 know that the representative from Williams is aware of our  
17 concerns, whether there is general comments you wish to make to  
18 assist us in evaluating this question. So, if that's okay,  
19 we're going to do that.

20 We're placing everybody under oath. Mr. Pratt,  
21 if you would, please.

22 [Thereupon the witness,  
23 JEFFREY SHOHEIT, swore to  
24 tell the truth, the whole  
25 truth, and nothing but the  
26 truth.]

27 CHAIRMAN DUNN: Identify yourself and your  
28 position re Williams, and we'll move forward.

01 MR. SHOHEIT: Yes.

02 My name is Jeffrey Shohet. I'm a partner with  
03 the law firm of Gray Cary Ware and Freidenrich in California,  
04 and I'm outside counsel to Williams.

05 CHAIRMAN DUNN: Again, I'm sorry, the last name  
06 again?

07 MR. SHOHEIT: It's spelled S-h-o-h-e-t, pronounced

08 Show-het.  
 09 CHAIRMAN DUNN: Thank you very much, Mr. Shohet.  
 10 Mr. Shohet, we've discussed this issue with  
 11 Williams' representatives, and I know that Williams has a  
 12 certain position on this.  
 13 Why don't I just open it up for your comments  
 14 with respect to this issue?  
 15 MR. SHOHET: Certainly, Senator.  
 16 On the question of the export issue, we read the  
 17 question both put to us by FERC and by this committee as whether  
 18 we engaged in the conduct identified by Enron as Export of  
 19 California Power.  
 20 CHAIRMAN DUNN: Let me stop you, Mr. Shohet.  
 21 Can everybody hear in the back? Is that mike on?  
 22 Mr. Shohet, just pull it a little closer. I just want to make  
 23 sure everybody can hear.  
 24 MR. SHOHET: Let me also say before I start,  
 25 Senator, I'm a lawyer here on behalf of Williams. I'm not  
 26 really a witness in the sense of a -- I can't really testify as  
 27 to the things that William did or didn't do.  
 28 But I was involved in the investigation. And let  
 0060  
 01 me assure the committee that while our answer may have been  
 02 short on this question, we did an awful lot of work. We did a  
 03 lot of examination of data, and did a lot of thinking about the  
 04 question to be sure we answered it completely, and that we  
 05 didn't mislead either this committee or FERC.  
 06 When we read the question which incorporated the  
 07 Enron Memorandum, we noted there were some essential features of  
 08 the Export of California Power as Enron engaged in it. One was  
 09 that it was a purchase from the Cal PX; and the other was that  
 10 it was an export of that power in some way to get around price  
 11 caps that had been imposed on the California markets.  
 12 Now, Williams is very different than Enron, as we  
 13 mentioned in our response. Enron is a pure trader. Enron buys  
 14 and sells positions in electricity. Williams, of course,  
 15 dispatches native generation in the state of California. So,  
 16 many of the strategies that Enron engaged in, for example,  
 17 trying to create situations where it could get into the  
 18 California real-time or supplemental market in some creative  
 19 way, Williams generates into that market, so we didn't have to  
 20 engage in those sorts of strategies.  
 21 In addition, purchases from the Cal PX were a  
 22 very small, I think 5 percent total, of Williams' total position  
 23 in the market, because again we dispatch native generation.  
 24 So, when we looked at that question, we were  
 25 trying to say, well, we knew we had bought some power from the  
 26 Cal PX. And we knew we had done exports over the period.  
 27 The question, though, was: Did we buy from the  
 28 Cal PX to export that power, and did we in some way do that to  
 0061  
 01 get around the caps?  
 02 So we did several data runs. I don't know how  
 03 detailed you want me to go into the specifics of our  
 04 investigation, but we began by trying to ask the question: What  
 05 data would we have to look at to test whether that had --  
 06 whether any of our transactions qualified as one of those types  
 07 of transactions?  
 08 One thing we came upon early in our investigation  
 09 that I want to report to the committee is that Williams had a  
 10 very specific policy, established by senior management and  
 11 directed to our traders, not to export power to get around the  
 12 California caps. In fact, when the price caps were being  
 13 imposed in the summer of 2000, there was a meeting with the  
 14 traders. And there was a question about whether they should be

15 allowed to export and re-import, because competitors of Williams  
16 who had generation outside of California were selling it to the  
17 California market above these caps.

18 And while Williams concluded that it could find  
19 no legal impediment to that, and there was nothing in the  
20 tariff, it decided to prohibit that kind of conduct. So, as  
21 matter of policy or strategy in the way we traded, I think I can  
22 safely say that we did not think it was a strategy in any way to  
23 export power outside of California to in any way evade price  
24 caps. We knew that.

25 But we also had to answer the question honestly  
26 whether any of the purchases that we had made in the Cal PX in  
27 fact found their way outside the state of California, and we  
28 looked at several data runs to do that. One of the things we

0062 01 first did is, we looked at the schedules at end of each day.

02 And you have to understand, people are buying and  
03 selling power as we approach real time. Many of the -- most, in  
04 fact, or I should at least say many of the transactions Williams  
05 engaged in were forward hedges of its dispatch position on the  
06 AES 4,000 megawatts. So, many of the transactions were months  
07 before real time.

08 But there's buying and selling of positions. And  
09 as you approach the day when you schedule that power, there's a  
10 schedule put together. It identifies the source, and it  
11 identifies the sink, or the location for the distribution of  
12 that power.

13 We looked at those schedules, and we could not  
14 match any from the very small portion of the Cal PX purchases  
15 that we had had to points outside of California.

16 So, we felt pretty confident that that was not a  
17 strategy, and we couldn't find any scheduled transactions, but  
18 the schedules don't necessarily identify the mind of the trader  
19 or the way the transaction was structured at the time; whether  
20 the person who made that purchase had in mind an export. All  
21 megawatts are fungible, so it's a little bit difficult to kind  
22 of even really get around -- get to the meat of the question:  
23 Did particular megawatts find their way outside of California?

24 But we did some additional data runs, even though  
25 the schedules didn't show it, and the additional data runs --  
26 and I'll be happy to describe them if you'd like.

27 Also, we were unable to identify any purchase of  
28 Cal PX power that found its way outside of California. And

0063 01 maybe we were a little over cautious at that point, but at that  
02 point, having not had the time to examine every single  
03 transaction on an hour-by-hour basis, we felt that we couldn't  
04 say to this committee or to FERC that none of the transactions,  
05 not one of the transactions, involved a transaction where  
06 somebody had purchased on the Cal PX, and that those megawatts  
07 were exported.

08 We tried to say that as best we could. I think  
09 we probably didn't do a very good job, because the FERC thought  
10 we were not being cooperative in the way we answered the  
11 question.

12 But the fact is, Senator, that -- the fact is  
13 that we could not identify any such transactions; that again,  
14 Cal PX purchases were a very small part of our purchases. And  
15 so, we answered it the way we did.

16 When the FERC reacted the way it did, we took a  
17 second look and tried to figure out what we had done wrong, and  
18 what we could do better to cooperate with the FERC, because  
19 certainly, our intention was not to be uncooperative with FERC  
20 nor with this committee.

21 We tried to gauge what it was that we had done

22 wrong. And we found out, or we concluded, that the FERC really  
 23 was less interested in us specifically limiting our answer to  
 24 the precise Enron strategy identified in the Enron Memo, but was  
 25 more interested in a broader reading of the question and a  
 26 discussion of our exports in general. And again, most of the  
 27 power sales that Williams makes are from its AES 4,000 position,  
 28 not purchases from the PX.

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01 So, we decided that the thing to do was simply to  
 02 open up our view of the question, expand our approach to the  
 03 question, and tell them everything we could tell them about our  
 04 export of California power, whether from the PX or whether from  
 05 our own generation or the generation that we dispatch. We gave  
 06 them schedules showing all of our exports, the prices that we  
 07 got for those exports, and we simply opened up our data, and we  
 08 produced that data to the committee.

09 So, we don't think there's certainly anything  
 10 inconsistent with our original answer. We think we've given  
 11 more information to the FERC, and now to this committee.

12 And we certainly, if we created any impression to  
 13 the contrary, we apologize. I'll just have to take blame for  
 14 not being clear enough in the way we put those original answers  
 15 together to say what we were really trying to say.

16 CHAIRMAN DUNN: Mr. Shohet if you would, share  
 17 with the committee, from the time that Williams received service  
 18 of our interrogatories to the time that it provided the answers  
 19 to this committee to those interrogatories, what investigation  
 20 research did Williams engage in to respond to it?

21 MR. SHOHET: Senator, we were working round the  
 22 clock in Tulsa with a team, a large team of people from my law  
 23 firm, working in cooperation with and under the direction of  
 24 Williams senior management, including Mr. Hobbs and a staff of  
 25 people, including people that would run data runs for us  
 26 throughout the night, because we had a lot of questions to  
 27 answer, and we knew it was important to the committee, we knew  
 28 it was important to FERC, and we sure knew we had an obligation

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01 to get it as right as we could.

02 And quite frankly, we felt that we didn't have  
 03 enough time, or as much time as we would have liked to be as  
 04 careful and precise as we felt we needed to be, but we did the  
 05 best we could.

06 But I would say, Senator, that over that period  
 07 of time, and we worked through the weekend, we worked through  
 08 the night, that that team, which at various times was as many as  
 09 10 and maybe as many as 20 people, depending on what we needed,  
 10 was working virtually around the clock.

11 CHAIRMAN DUNN: It seems, at least from my  
 12 impression, I won't speak for the other committee members, that  
 13 Williams took an extremely literal reading of the Enron  
 14 Memorandums and how FERC and this committee posed its question  
 15 regarding those Memorandums, or the strategies in those  
 16 Memorandums.

17 Who at Williams made the decision to keep the  
 18 interpretation as provided in the answers to FERC and our  
 19 committee so literal?

20 MR. SHOHET: Well, I don't think it was one  
 21 person. It was -- you know, there were a lot of folks. It was  
 22 a large team effort and a collaboration to try to understand the  
 23 question, and try to understand our response and obligation.

24 I will acknowledge that we did -- we felt -- we  
 25 weren't sure, for example, if the key component that was of  
 26 interest to the committee or of interest to FERC was the fact  
 27 that somebody was buying from the Cal PX, which was a market  
 28 that was created to serve California load, and was pulling it

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01 out of that PX, and pulling it across the border. We weren't  
 02 sure if that was an essential ingredient of what was of concern,  
 03 or issue. It was certainly an ingredient in the Enron strategy  
 04 as it identified it. And there was certainly an element getting  
 05 around the price caps that was part of the question.

06 So, those were viewed by us, having analyzed the  
 07 question, as at least components of the question, and we felt  
 08 they were at least important to the questioners.

09 Maybe we had misjudged that. We apparently did  
 10 with FERC, because they wanted a broader answer to the thing,  
 11 and we ultimately provided it.

12 But we felt we didn't know, and we did stick to  
 13 the question.

14 And I will also say something else, Senator. We  
 15 also looked at whether we had made any sales back into  
 16 California -- I'm sorry -- whether we had made any sales from  
 17 exported power above the price cap, and we found that we had  
 18 not, which was another reason we felt that the price caps were  
 19 not related to any of these transactions.

20 So, I guess I'd say, I'm not sure if I've  
 21 answered your question. It was a collaborative effort by the  
 22 group, including counsel, and including the business people at  
 23 Williams, to try to do the best we could to understand the  
 24 question and answer it. And we felt we had done that initially.

25 We felt FERC was a little disappointed with our  
 26 answer, so we gave them a much broader data run in answer to the  
 27 concept of exporting power well beyond what they had identified  
 28 as part of the Enron strategy.

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01 CHAIRMAN DUNN: Mr. Shohet, I know it didn't  
 02 happen with respect to our committee. Did anybody from Williams  
 03 call anyone at FERC to ask for clarification about the original  
 04 question that was posed regarding export strategies?

05 MR. SHOHET: Senator, not until the OSC came  
 06 down. And then I wasn't involved in it, but I know that when we  
 07 got the OSC, and we were quite -- I think shocked is the best  
 08 word I can use -- by it, certainly very concerned. I mean, they  
 09 certainly got our attention, Senator.

10 I know that there was some contacts made or  
 11 attempts to divine what it was we did wrong, and how we could do  
 12 a better job. And I think the conclusion was that we had  
 13 probably answered the question that they had asked, and not  
 14 answered the question that they really wanted the answer to.

15 When we broadened our concept of the question, I  
 16 think we -- I think, I haven't heard from the FERC -- but I  
 17 think we've given them the information that we believe they  
 18 want.

19 I hope we've given the information to this  
 20 committee that it wants. If we haven't, we are -- stand ready  
 21 to supplement that response to provide any additional answers or  
 22 information. We certainly didn't intend to at any time, either  
 23 in the original answer or the supplement, to mislead anyone or  
 24 to change our responses.

25 CHAIRMAN DUNN: It's my understanding, and I  
 26 invite my staff to correct me if I'm wrong here, that while you  
 27 provided a supplemental response to FERC, you have not actually  
 28 supplemented our responses. You've simply sent a copy of your

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01 FERC supplemental responses to us; correct?

02 MR. SHOHET: Correct, Senator. I guess I don't  
 03 know if you share the view with FERC that you didn't want a  
 04 literal response to that question, but wanted a broader  
 05 response.

06 We hope we've given you the information. But

07 certainly, if you'd like us to make that a specific response to  
08 the committee, we can certainly do that. If you'd like  
09 something different, because if we haven't hit mark in terms of  
10 what the committee was looking for, please let me know today,  
11 and we'll try to do it differently.

12 CHAIRMAN DUNN: Mr. Shohet, we will need the  
13 supplemental response under penalty of perjury directly to this  
14 committee, and let me tell you why.

15 There's little this committee can do about  
16 responses, whether it's Williams or anybody else, that we feel  
17 are inadequate to FERC. We can only deal with responses that  
18 are directly to this committee. I suspect FERC would take  
19 unkindly if we tried to take over their role, although many of  
20 us suspect we may have to at some point in time. That's another  
21 issue. Don't worry, Mr. Shohet.

22 I want to raise not only with respect to export,  
23 but it seems the same sort of literal interpretation was applied  
24 by Williams with respect to the Death Star strategy, also to the  
25 Buy Back strategy. I believe those are also supplemented in the  
26 -- excuse me -- FERC was provided supplemental responses on  
27 those as well.

28 MR. SHOHET: Yes.

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01 CHAIRMAN DUNN: No sense in us going through it.  
02 I suspect your answer is the same, Williams took a very literal  
03 interpretation.

04 MR. SHOHET: Certainly on the Buy Back, no. We  
05 found that the only -- if you're talking about the Ricochet  
06 transactions, the only Ricochet transactions that we engaged in  
07 involved the importation of power from outside the state of  
08 California. That is, and I hesitate to call them Ricochet.

09 We had -- we identified two informal  
10 park-and-lend transactions we found in our investigation. But I  
11 would not call that as a result of a literal interpretation,  
12 because in our view, the vice of the Ricochet transaction as  
13 Enron engaged in it was pulling power out of California, putting  
14 it in one of the out of state ties, then re-importing it around  
15 the cap.

16 Our two transactions we identified involved power  
17 that was sourced outside of California. So, we were bringing  
18 power that wasn't native to California into California, which is  
19 exactly what the ISO wanted to happen.

20 So that one, I think, was not.

21 On the Death Star one, and I'm not exactly  
22 sure -- I'm not exactly sure why you feel that we had only  
23 given -- that that was a result of a literal interpretation. We  
24 didn't do anything, Senator, that came close to Death Star as it  
25 was described in the Enron Memo, and I'll be happy, if you have  
26 some questions, I'll be happy to explain why.

27 I think the California Export of Power was the  
28 one where we had the most trouble with exactly what it was that

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01 the committee and the FERC wanted, and how best to answer it.

02 CHAIRMAN DUNN: Okay. Just a couple follow-up  
03 questions, and then I'll turn it over to any committee members.

04 First, Mr. Shohet, have you reviewed PacifiCorp's  
05 responses in which it identifies Williams as part of Ricochet  
06 transactions?

07 MR. SHOHET: I know that they have said that,  
08 Senator. And I'm sure at some point I saw it, but I'm aware  
09 that they have said that.

10 PacifiCorp was one of the companies in the  
11 relevant period that we had an informal park-and-lend, as I  
12 understand it, and we've outlined in detail in the supplemental  
13 response, which I think you have, and which we're going to now

14 make as a formal response, precisely the elements of that  
15 transaction.

16 But that transaction, again, involved power  
17 sourced from outside of California, brought into California,  
18 which was not, in our view, anything close to the Ricochet  
19 transactions that Enron had engaged in.

20 CHAIRMAN DUNN: Has anyone from Williams  
21 discussed PacifiCorp's responses re: Ricochet in which it names  
22 Williams since PacifiCorp filed that response to FERC?

23 MR. SHOHEIT: Yes, Senator. We looked at that  
24 because of PacifiCorp's response.

25 CHAIRMAN DUNN: Can you be a little more  
26 specific, Mr. Shohet? I understand that. You've already said  
27 that.

28 The question really is, has anyone from Williams

0071 talked with anyone from PacifiCorp about that response?

02 MR. SHOHEIT: Not to my knowledge, Senator. I  
03 could be wrong. I'm not aware of anyone.

04 CHAIRMAN DUNN: One of the initial statements  
05 that is made in the response to this committee, and let me read  
06 it real quickly, very first paragraph, Mr. Shohet, of the  
07 response to our committee by Williams:

08 "The investigation did not  
09 reveal that Williams' traders  
10 engaged in any of the specific  
11 trading activities. Indeed,  
12 Williams' traders were not  
13 familiar with the Enron  
14 nicknames allegedly used within  
15 Enron to describe its  
16 'representative strategies.'  
17 Nor could Williams identify any  
18 documents referencing such  
19 nicknames."

20 Who provided the information that resulted in  
21 that paragraph? That is, Williams not knowing about the  
22 nicknames?

23 MR. SHOHEIT: We conducted a trader-by-trader  
24 interview of every trader that traded during the relevant  
25 period. That was one of the round-the-clock activities that we  
26 engaged in.

27 I led that investigation. I was part of that  
28 investigation. I was among the people that conducted the

0072 interviews, as did others.

02 But we asked every trader, individually, not as a  
03 group, one at a time in a conference room. We went down the  
04 list of all of those strategies in detail, and asked them if  
05 they had -- were familiar with those terms, if they had engaged  
06 in those terms.

07 And I can tell you that the answer to that  
08 question as we put it in the paragraph is the result of those  
09 interviews.

10 CHAIRMAN DUNN: Let me give you a heads up about  
11 something, Mr. Shohet, because in the past few days, as we've  
12 been doing a lot of interviewing with a lot of market  
13 participants, particularly with the upcoming issue re: LADWP,  
14 we've been told by traders from other market participants that  
15 that's not correct from their view. That is, that they in fact  
16 learned of these nicknames directly from Williams as early as  
17 2000.

18 It's something we're going to have to deal with,  
19 you or some other representative from Williams about that  
20 particular issue while we try to sort out whether, in fact,

21 Williams' traders were familiar with what have come to be known  
22 as the Enron nicknames along the way.

23 I have one last question, and then open it up to  
24 any other committee members.

25 That is, in the supplemental responses that were  
26 provided by Williams to FERC, Williams identifies situations in  
27 which Cal ISO requested scheduling without a corresponding load.  
28 In fact, you state, Williams states,

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01 "Cal ISO was aware that no  
02 market load was being served  
03 by the Williams load."

04 Can you explain with a little more specificity  
05 what Williams is referring to with respect to that?

06 MR. SHOHET: Sure. Williams as a generator is  
07 given a load ID. We had a load ID on, I believe, it was Alameda  
08 7, one of the AES plants that we dispatched power from. And it  
09 served about a half a megawatt of load on that plant.

10 Williams, like others, has situations in which it  
11 needs to use a load ID for dealing with a variety of situations  
12 which we've outlined in the response. One is when we're  
13 ramping. Ramping means we're coming down off the schedule, and  
14 we have extra megawatts that we can't shut off, if you will,  
15 fast enough to meet the schedule that we're coming down to. And  
16 we assign those megawatts, because the ISO wants a balanced  
17 schedule, we assign those to our load ID. And we reported that.

18 We understand that the ISO is aware of it. In  
19 fact, in our supplemental response, Senator, I believe we  
20 attached an e-mail that came from our ISO representative  
21 approving the use of the load ID for certain imbalanced schedule  
22 situations.

23 There are other situations that don't come to  
24 mind, but that are identified in the responses, where we used  
25 the load ID for -- oh yes, testing, where we test a plant.  
26 Sometimes we have to fire up a plant, and that's going to cause  
27 megawatts to be generated by that plant. The ISO likes to have  
28 those megawatts scheduled, because they like to know,

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01 apparently, what's on the grid and what's not. And they approve  
02 our use of the load ID for scheduling those extra megawatts to  
03 that load ID.

04 The point being that the use of our load ID for  
05 those purposes, those incidental purposes, are very different  
06 than what we understood the so-called Inc-ing load or Fat Boy  
07 type transactions were as Enron used them, because Enron  
08 actually had real load IDs serving real market participants.

09 Enron was -- I forget the acronym -- Energy  
10 Service Provider, it was one of those private providers that was  
11 actually serving market load and had a load ID for that purpose.  
12 So, its use of its load IDs was very different, and it also was  
13 using it, as we read the strategy, to leverage into the  
14 supplemental market because it was not -- didn't have native  
15 generation.

16 We didn't have to do that. We had native  
17 generation. We could sell that into the supplemental market.

18 So, I think what we tried to do was explain,  
19 being very cautious and not wanting to give the impression that  
20 we didn't have load IDs and didn't use them, but we felt that  
21 they were very different than any use that had been made by  
22 Enron and were not part of any of those strategies, certainly,  
23 that were identified.

24 CHAIRMAN DUNN: Fair to conclude in part of that,  
25 though, there are instances in which ISO was asking you to  
26 submit generation without a corresponding load?

27 MR. SHOHET: I would say, certainly telling us we

28 could do that, and expecting us, or understanding we would use

0075 01 the load ID for that purpose, Senator, yes.

02 CHAIRMAN DUNN: Any other questions from the

03 committee?

04 Seeing no other questions, hold on, Mr. Shohet,

05 Mr. Drivon.

06 MR. DRIVON: If you had a whole group of folks

07 trying to figure out what we meant by the question that we

08 asked, how come none of those folks that were trying to figure

09 that out called me on the telephone to ask me what I meant by

10 that question?

11 MR. SHOHET: We weren't -- as I said, other

12 than -- I don't remember that we were really struggling, if I

13 gave the impression that we were struggling.

14 We wanted to answer the question that was asked,

15 but we felt we could read the question and answer it.

16 MR. DRIVON: So, you weren't struggling to

17 understand the question, but it took a whole bunch of you to

18 figure out what the question was?

19 I mean, you testified a minute ago that you had

20 several people who were trying to read this question and decide

21 what people meant by it.

22 MR. SHOHET: I don't want to give -- the

23 questions -- the questions were specifically incorporating the

24 Enron Memo.

25 So, we looked at the questions; we looked at the

26 Enron Memos.

27 I think when I was talking about the Export of

28 California Power more because of our situation than anything

0076 01 about the question, we were really stuck on that one as to

02 whether we should deny it, or whether we should say we can't

03 admit or deny.

04 So, it was more our situation as it is related to

05 the question than any ambiguity in the question. The question

06 was clear.

07 MR. DRIVON: Then, when you had several people

08 trying to figure out what your position was with respect to the

09 question, how come you didn't have somebody call me up and ask

10 me to help clarify that problem?

11 MR. SHOHET: I'll tell you, Larry, if I had it to

12 do over, that's exactly -- I would have called you and I would

13 have called FERC, because were not particularly happy when an

14 Order to Show Cause came out.

15 So, you know, hindsight is there. Certainly next

16 time, leave me your cell phone and I will call you.

17 MR. DRIVON: I'll give you my home phone.

18 MR. SHOHET: We live and learn.

19 CHAIRMAN DUNN: Let me do this, unless any member

20 of the committee wishes a different direction.

21 I will not make any motion on this today,

22 Mr. Shohet. From my personal perspective, it appears that the

23 answer was a lawyer's answer. It was quite deliberately meant

24 to be very narrow in its response, when I think there are at

25 least some within the Williams organization that knew full well

26 that what we were looking at -- ignoring FERC, albeit I suspect

27 they were looking at it the same way -- was looking for a

28 broader interpretation of that particular question. Knowing

0077 01 full well, you just look at the title of this committee on

02 Market Manipulation, and I know Williams may disagree that

03 that's what was going on, but certainly the intent of it, we

04 felt, was clear.

05 My hope is that not only for Williams, but the

06 other market participants, next time there is a question on the  
07 intent, and you have a choice of a very narrow response and a  
08 broader response, that either, A, those responding to this  
09 committee opt for the broader response; or B, at the very least,  
10 pick up the phone and call, and see what we are seeking.  
11 Because it places any of those responding our committee's  
12 inquiries into the unfortunate position, Mr. Shohet, that you  
13 are in today, in trying to defend what potentially could have  
14 resulted in a motion for contempt.

15 We won't do that today, but hopefully it will  
16 serve as is a signal to Williams and others.

17 Make it broad.

18 Mr. Drivon.

19 MR. DRIVON: Just to make it real easy, any time  
20 you get a request from us, the easiest and best way to interpret  
21 it is to put yourself in our shoes and say, if you were us, what  
22 documents that you have would we be looking for that would help  
23 us understand manipulation of the wholesale energy market?

24 That's the context in which we're asking these  
25 questions.

26 So, I'm not so bright that I can always ask these  
27 questions in a way that they can't be variously interpreted, but  
28 that's what we mean.

0078

01 MR. SHOHET: We'll try to do a better job next  
02 time.

03 CHAIRMAN DUNN: Thank you, Mr. Shohet. I  
04 appreciate that.

05 Let's roll right into LADWP. It is already after  
06 3:00 o'clock. We've got some ground to cover here.

07 What I'm going to do with respect to this  
08 particular issue is establish a little bit of background.

09 There have been rather extensive investigations  
10 done by the committee staff over the past few days. I'm going  
11 to ask Mr. Drivon to review what has occurred over the past few  
12 days on this issue.

13 Let me set the ground work, please.

14 Go ahead, come on up, and we'll get everybody  
15 identified in a moment. We'll find some extra chairs and so  
16 forth.

17 Let me give the background to everybody. This  
18 also relates to sworn answers to our interrogatories that  
19 resulted after the Enron Memorandums became public.

20 In addition to the actual private generators and  
21 traders, we also served similar interrogatories on a number of  
22 the municipal electricity systems. The first issue today with  
23 respect to LADWP relates to their answers to that.

24 Specifically, we were served responses prepared,  
25 at least sent to us, by the City Attorney's Office, dated May  
26 30th, responding to our interrogatories or data requests dated  
27 May 17th. The sworn answers were provided by Mark Ward, and I  
28 believe Mark is here today.

0079

01 MR. WARD: Yes, sir.

02 CHAIRMAN DUNN: There we go. We've got Mark  
03 front and center. He is the individual that signed the sworn  
04 declaration providing the answers.

05 After we received those answers, we also received  
06 answers from PG&E NEG. In the response by PG&E NEG, they  
07 produced some documents. One of the documents that was produced  
08 by them was an e-mail dated Monday, May 13th, 2002. I'm sorry.

09 The e-mail is dated Sunday, November 12th, 2000 from David  
10 Pierce to a variety of individuals. The e-mail is very short.  
11 I believe we have this one. Donna, don't we have this one.

12 MR. DRIVON: Number 22.

13 CHAIRMAN DUNN: As Donna is blowing that up, it's  
14 very short. It says:  
15 "If LA agrees to wheel power to  
16 Malin on your behalf, you must  
17 make sure that the power is  
18 delivered on the other side of  
19 the California border (i.e., in  
20 BPA's control area)."  
21 I assume BPA is Bonneville Power.  
22 "The ISO is savvy to LA's  
23 attempts to circumvent  
24 ricochets by showing an export  
25 and import of equal megawatts  
26 on the California side of the  
27 tie in order to hide the  
28 ricochet nature of the  
0080 transaction."  
01 That e-mail, despite what some press report  
02 releases later said, raised questions on behalf of the  
03 committee, which we immediately commenced further investigation  
04 to determine what was really at the core of that particular  
05 e-mail.  
06 That led us to the response filed by LADWP, and I  
07 will read the answer re: The Ricochet Strategy. It says, and  
08 this is Paragraph H of LADWP's response:  
09 "No, LADWP did not engage in  
10 the conduct, acts and strategies  
11 set forth in ..."  
12 basically referring to the Enron Memorandum,  
13 "... [described as] 'Ricochet'  
14 [on] pages 6 and 7 of the  
15 Memorandum."  
16 Referring to the Enron Memorandum  
17 Mr. Drivon, are you ready?  
18 After we saw the e-mail and compared it to the  
19 response, it's at the very bottom for those that are following,  
20 Paragraph H, right there. That's the response of LADWP re:  
21 Ricochet. We then commenced further investigation.  
22 Mr. Drivon, will you share with the committee the  
23 findings with respect to the investigation on the Ricochet  
24 answer? I'm assuming that's the issue of concern to the  
25 committee at this time from your perspective.  
26 MR. DRIVON: We began to try to dig into it to  
27 determine what had happened. And in doing that, we needed to  
0081 understand what sort of transaction was taking place, and what  
02 was being complained about.  
03 We began by discussing this matter with the  
04 people who were identified on the e-mail, Number 22, and we  
05 attempted to get ahold of these folks to talk with them.  
06 If you could put the recipients part of that up,  
07 please, "From" and "To."  
08 CHAIRMAN DUNN: This is actually an e-mail within  
09 an e-mail.  
10 MR. DRIVON: The e-mail involved NEG, which is  
11 the unregulated trading arm of PG&E. And David Pierce, who sent  
12 this particular e-mail on Sunday, November 12th, at 9:45 in the  
13 morning, is a trader with that group and is still a trader with  
14 them.  
15 This e-mail, we spoke with him. We spoke with  
16 Mr. Tish. We spoke with others that are involved with this in  
17 an attempt to understand what this was about.  
18 We obtained transcripts of a series of recorded  
19 conversations that were supplied to us subsequently by NEG of

20 this particular transaction, and those helped us to understand  
 21 what had happened.  
 22 If I could have 139, please.  
 23 139 is a very crude schematic representation of  
 24 the trades that we understand took place here.  
 25 CHAIRMAN DUNN: And this diagram was prepared by?  
 26 MR. DRIVON: This diagram was prepared by me, and  
 27 so I take responsibility for illegibility of it.  
 28 CHAIRMAN DUNN: I want to make sure nobody  
 0082  
 01 thought that this was part of any of the actual documents that  
 02 were produced.  
 03 MR. DRIVON: No, I produced this.  
 04 This was compiled by Mr. Schreiber, myself, and  
 05 other members of the staff, based on information that we got  
 06 from various sources, mostly NEG and the trading tape  
 07 transcriptions that we have.  
 08 What this describes, if you go to the bottom  
 09 right, you will see a little square box, and next to it it has  
 10 IIG. That's Imperial Irrigation District. That is a power  
 11 generator.  
 12 CHAIRMAN DUNN: Located in?  
 13 MR. DRIVON: Located in Southern California.  
 14 There's a little dotted line with arrows, and  
 15 above it is the number 1. There is a letter 1. Number 1 is,  
 16 there's a legend on the other side saying what it is, and it  
 17 says that 50 megawatts of power were sold to NEG by IID at what  
 18 we think was 50 dollars, but may have been 70 dollars a megawatt  
 19 hour.  
 20 The graph goes on then to show that that was  
 21 apparently again sold from NEG to LADWP at Palo Verde for 70  
 22 dollars. The 50 megawatts was then, pursuant to an arrangement  
 23 between LADWP and NEG, wheeled from there to Malin, which is in  
 24 southern Oregon at top of the diagram. And that little dotted  
 25 line that goes up right there, goes up to Malin. Malin is a tie  
 26 at the Oregon-California border.  
 27 CHAIRMAN DUNN: Can I interrupt you for those who  
 28 are unfamiliar?  
 0083  
 01 What do you mean by a tie?  
 02 MR. DRIVON: It's a place where different  
 03 distribution systems and transmission systems tie.  
 04 Above Malin is the BPA control area.  
 05 CHAIRMAN DUNN: Bonneville Power?  
 06 MR. DRIVON: That's correct. And south of the  
 07 border with Oregon is the Independent System Operator, the  
 08 California control area.  
 09 The power that was wheeled from Southern  
 10 California to Northern California, the 50 megawatts, was  
 11 included in a 178 megawatt amount of power and delivered to  
 12 Malin in that form; 128 megawatts of that power was then  
 13 delivered from Malin to sink in the BPA control area, and 50  
 14 megawatts of that power was sold back to NEG by LADWP.  
 15 CHAIRMAN DUNN: Let me interrupt, if I may,  
 16 because it's going to become critical as we go into the  
 17 transcripts of the phone calls involving this.  
 18 When you say sink in BPA territory, what do you  
 19 mean by that?  
 20 MR. DRIVON: It's distributed or used there.  
 21 CHAIRMAN DUNN: So, of the 178 that was wheeled  
 22 up, 128 sank in BPA's territory.  
 23 MR. DRIVON: Fifty megawatts was sold by LADWP  
 24 back to NEG for 95 dollars a megawatt hour, a mark-up of 25  
 25 dollars a megawatts hour. We recognize that there is a loss in  
 26 the transmission that has to be covered in some way.

27 But in any case, the 50 megawatts was then sold,  
28 as you can see at Number 6, to Constellation, which is a  
0084

01 marketer, for 150 dollars a megawatt hour by NEG.

02 Constellation then scheduled over two hours, 50  
03 megawatts each hour period, as supplemental power back into the  
04 ISO or into the ISO control area at what we believe was 250  
05 dollars a megawatt hour, which was the cap, but it's difficult  
06 to verify what that was because we can't follow that particular  
07 tag.

08 The first hour of this transaction schedule was  
09 taken by the ISO. The second hour was not taken by the ISO  
10 because the ISO identified the practice as a Ricochet, according  
11 to the terminology that was used.

12 And the tapes that we have transcriptions of go  
13 into a great deal of detail as to who was doing what, when, what  
14 the terminology was, how it was being used, and et cetera.

15 One of the questions that we had was, what was  
16 the definition of the term Ricochet? And as used in the NEG  
17 memorandum, and so in speaking with Mr. Pierce on that precise  
18 point, we asked the question, what do you mean by the term  
19 Ricochet? Did you mean Ricochet as you understood it according  
20 to the Enron-type definition, or some other definition?

21 He told us that he did not learn of any  
22 additional definition of the word Ricochet other than what he  
23 understood was meant by the Enron-type definition, which he had  
24 learned from Williams in the summer of 2000. He didn't learn of  
25 any different definition until the series of conversations  
26 concerning this particular trade expanded his knowledge of what  
27 people might mean to include bouncing a trade off the tie, in  
28 this case at Malin.

0085  
01 In looking at this, the net effect of this  
02 transaction was to take megawatts which were in Southern  
03 California at 50 or 75 dollars -- and I'm not positive which of  
04 those two -- and turn those into megawatts which were returned  
05 to California at what we believe was 250 dollars a megawatt  
06 hour. And that was done by the execution of strategies that  
07 involved at least three market participants -- LADWP, NEG and  
08 Constellation -- and involved the tie point at Malin.

09 Originally we thought that this might be an  
10 exercise of what was known as DC Circulation, which is a highly  
11 technical method of helping to alleviate constriction on the NP  
12 15 Pathway through the use of the DC Circuit, but this power was  
13 not sent that way. It was sent over the AC Circuit, and it was  
14 not involved in what's known as DC Circulation, but rather, was  
15 a trade or a series of trades involving the movement of these  
16 particular megawatts, the result of which was this price  
17 increase.

18 CHAIRMAN DUNN: But you spoke to the author of  
19 this e-mail, and it was his description that he was referring  
20 to?

21 MR. DRIVON: We asked him specifically,  
22 particularly in light of the fact that we were informed that  
23 LADWP thought that we had sort of, without any evidence or  
24 background, tied the term Ricochet as used in this e-mail to a  
25 definition, an Enron-style definition, when in fact it was not  
26 our definition that was being used here.

27 We got that connection directly from the author  
28 of this e-mail, Mr. Pierce, who gave us that information in the  
0086

01 presence -- he was on a telephone, but he was in the presence of  
02 his attorney, who was with Latham and Watkins, and who was  
03 supervising that end of the conversation.

04 I doubt he was misspeaking himself at the time.

05 CHAIRMAN DUNN: Mr. Schreiber, do you have  
06 something you want to add?  
07 MR. SCHREIBER: I do. I'm not sure if you want  
08 to swear me in.  
09 CHAIRMAN DUNN: We're doing it to everybody.  
10 [Thereupon the witness,  
11 CHRISTIAN SCHREIBER, swore  
12 to tell the truth, the whole  
13 truth, and nothing but the  
14 truth.]  
15 CHAIRMAN DUNN: Mr. Schreiber, will you for the  
16 record identify yourself.  
17 For those who are not familiar with Chris, he is  
18 one of our lead staff, lead investigators, on the energy  
19 investigation.  
20 MR. SCHREIBER: You've taken the job of  
21 announcing my title, I think.  
22 My name's Chris Schreiber, and I work for the  
23 committee.  
24 I just want to supplement a couple things that  
25 Larry said here.  
26 When the e-mail was discovered, we undertook --  
27 obviously it raised red flags for reasons of the mention of the  
28 word Ricochet. So, we undertook to find out what was meant by  
0087 the term Ricochet, and I called Steve Tish immediately.  
01 CHAIRMAN DUNN: Steve Tish being one of the  
02 recipients of the e-mail?  
03 MR. SCHREIBER: Correct, thank you. He's  
04 currently a trader at PacifiCorp. He was one of the recipients  
05 on the e-mail, and actually, as it turns out, was the trader  
06 on this particular issue.  
07 So, I just want to back up just a touch here.  
08 Steve was reluctant to talk about this at first. I since have  
09 had several conversations with him, including a conversation  
10 today, and he has also looked at the transcript that we were  
11 provided by NEG.  
12 When he saw it, when he saw the e-mail  
13 originally, it did refresh his memory, and we engaged in a  
14 dialogue about what Ricochet meant.  
15 While we were still compiling knowledge about  
16 what Ricochet meant, I think it's fair to say that LADWP  
17 introduced an alternative definition of Ricochet that heretofore  
18 had not been understood by anybody other than, apparently,  
19 LADWP.  
20 So, with now two competing definitions of  
21 Ricochet out there, part of what we were trying to figure out  
22 is, which definition David Pierce, the author of the e-mail,  
23 intended to use. He, as Larry mentioned, he made it very clear  
24 that he intended the Enron definition of Ricochet per its Memo  
25 of December 6th.  
26 I just think it's important to note here that,  
27 you know, LADWP introduced a piece of evidence, if you will,  
0088 into the debate, and that is that Ricochet didn't mean Ricochet.  
01 And the importance of this is, in trying to determine whether or  
02 not in fact there was a second type of Ricochet.  
03 CHAIRMAN DUNN: From your understanding, and  
04 we're going to be hearing from the LADWP representatives, what  
05 was your understanding of LADWP's definition of Ricochet in  
06 reference to the transaction in question?  
07 MR. SCHREIBER: Well, I think LADWP tried to  
08 characterize the Ricochet as something other than an Enron-  
09 style Ricochet.  
10 I don't think the committee had made, or the

12 staff anyway, I can certainly speak myself. I don't think we  
 13 made any determination because --  
 14 CHAIRMAN DUNN: Let me interrupt. The question  
 15 is, what's your understanding of LADWP's definition of Ricochet?  
 16 MR. SCHREIBER: LADWP's definition of Ricochet is  
 17 that it is a transaction in which megawatts flow to the border,  
 18 never leave California, and then are returned to California.  
 19 CHAIRMAN DUNN: Did anybody in your discussions  
 20 with this express why LADWP would do that type of transaction?  
 21 MR. SCHREIBER: No, that's been quite unclear.  
 22 CHAIRMAN DUNN: Anything else you want to add,  
 23 Chris, before we go back to Mr. Drivon?  
 24 MR. SCHREIBER: Just one thing. And that is, the  
 25 transaction that took place here has become much more clear,  
 26 given the transcript that was provided to us by NEG.  
 27 CHAIRMAN DUNN: Which we're about to go into.  
 28 MR. SCHREIBER: Right. But I want to preface  
 0089  
 01 that by saying that Steve Tish, the author so to speak or trader  
 02 involved in the transaction, did not know what a Ricochet  
 03 transaction was. ISO had a definition of Ricochet.  
 04 I just want to make sure that that's clear. We  
 05 weren't -- we didn't have an idea in our own heads that this  
 06 meant something, you know, that we knew definitively that this  
 07 was an Enron-style Ricochet.  
 08 CHAIRMAN DUNN: Mr. Drivon, let me go back to you  
 09 for a second.  
 10 I'm assuming you're going to go right into the  
 11 transcripts at this point.  
 12 MR. DRIVON: Whatever you desire, Senator.  
 13 CHAIRMAN DUNN: Let me ask just a couple  
 14 questions.  
 15 Assuming that the description you gave here with  
 16 the diagram that's up on the screen right now is accurate, what  
 17 advantage would there be to engaging in that strategy? And to  
 18 your knowledge, does it violate any of the applicable rules,  
 19 tariffs, regulations, et cetera?  
 20 MR. DRIVON: Well, the advantage to this would be  
 21 that there was money made by a number of market participants,  
 22 the net effect of which was, people paid more money for this  
 23 electricity than needed to be paid.  
 24 And if we go -- could we go to Page 118, please.  
 25 It's part of the transcript that we have of the NEG --  
 26 CHAIRMAN DUNN: I think you're after one sentence  
 27 here, and then you need to return to a general description of  
 28 what it is we're about to review.  
 0090  
 01 MR. DRIVON: It's a three-line.  
 02 MR. SNYDER: Senator, I'm Stan Snyder on behalf  
 03 of DWP.  
 04 We don't have a copy of this transcript. Since  
 05 it's going to be read, is the committee going to provide us with  
 06 a copy.  
 07 CHAIRMAN DUNN: Do we have an extra one? There  
 08 you go.  
 09 MR. SNYDER: Also, Senator I have one other  
 10 question. There's some inaccuracies in that diagram. Are you  
 11 going to allow us to --  
 12 CHAIRMAN DUNN: I already said that, Mr. Snyder.  
 13 We're going to have -- LADWP's going to have all the time they  
 14 want to respond to that.  
 15 MR. SNYDER: Well, I thought perhaps your  
 16 witnesses could even clarify before we do. There is just one  
 17 specific thing.  
 18 I note your counsel's diagram. But if you went

19 back to it, he has incorrectly where the Cal ISO border is. The  
20 Cal ISO border control area goes up to Malin.  
21 CHAIRMAN DUNN: With all due respect, Mr. Snyder,  
22 this issue's going to be addressed in transcripts. So, stay  
23 tuned. You'll get your opportunity to respond.  
24 Mr. Drivon.  
25 MR. DRIVON: What he's talking about, Senator, is  
26 that Malin is physically located in Oregon, but is generally  
27 considered to be a tie point within the ISO control area. So,  
28 whatever that means, it means. I do not disagree with him on  
0091 that point.  
02 There's a three-line, the first three-line entry,  
03 where it says "Boyd/ISO" about a third of the way down from the  
04 top.  
05 One of the things that was interesting here, and  
06 we'll get back to more of the sequence of it, as I said, the net  
07 effect of this was to raise the price of electrons, and  
08 therefore the price of energy in Southern California.  
09 And we've talked about the wheeling or  
10 transportation of this energy from one end of the state to the  
11 other. And Boyd, who is the ISO supervisor who was involved in  
12 discussing this matter with various people, said in response to  
13 David, who is the trader with NEG:  
14 "... as long as they see that,  
15 and then it comes, turns and  
16 comes back to me, it never goes  
17 into the state. Granted, it  
18 never goes across the boarder.  
19 We know how power flows, it  
20 probably never leaves LA."  
21 So, you know, I don't know what's -- I mean, you  
22 have power that starts in the Southern California area, winds up  
23 in the Southern California area, probably never leaves the  
24 Southern California area physically, and winds up costing four  
25 or five times as much money for people to buy it when it's  
26 finally all said and done.  
27 CHAIRMAN DUNN: Mr. Drivon, perhaps now is the  
28 time. Let's get into the transcript.  
0092 MR. DRIVON: All right.  
02 CHAIRMAN DUNN: Walk through them.  
03 MR. DRIVON: All right. Let's see.  
04 Could I have Number 98, please.  
05 CHAIRMAN DUNN: Actually, I think you want to  
06 start with 96; don't you?  
07 MR. DRIVON: I'm sure I do. Let me have a look  
08 at 96.  
09 This is a series of transcriptions. These are  
10 transcriptions of a series of telephone conversations. The  
11 common denominator is that NEG was a party to each of these  
12 conversations. The conversations involved conversations with  
13 Constellation, conversations with the ISO, conversations with  
14 LA, and conversations between NEG people.  
15 And the source of these would have been the audio  
16 tape recordings made and maintained by NEG.  
17 CHAIRMAN DUNN: When did we receive this?  
18 MR. DRIVON: We received these by FAX on the 26th  
19 in the afternoon.  
20 CHAIRMAN DUNN: There's been an issue of  
21 confidentiality. When was that resolved?  
22 MR. DRIVON: That was resolved this morning.  
23 It's also important to note that each of the  
24 market participants who was involved in these transactions would  
25 maintain or probably maintain its own recordings of

26 conversations that it had concerning trades.  
 27 And we had -- somewhere between 11:00 and 12:00  
 28 o'clock today, were provided the transcript of a tape involving  
 0093 trading conversations on November 11th, and I think the 12th,  
 01 that were maintained and provided to us by LADWP concerning  
 02 these transactions.  
 03  
 04 CHAIRMAN DUNN: Mr. Drivon, there's some issues  
 05 surrounding the LADWP transcript that you just referenced that's  
 06 not up on the screen because we just got it shortly before the  
 07 committee hearing. Let's hold that off until you review the  
 08 transcript that the committee did receive from NEG.  
 09 MR. DRIVON: Yes.  
 10 If we can go to 96, at the top of the page it  
 11 shows that this is a conversation between Steve, who is Steve  
 12 Tish, a power trader with NEG, and Constellation. The trader at  
 13 Constellation is named Ray. And this begins by talking about  
 14 the fact that, if we go down there, just that line, please.  
 15 Constellation, Ray says to Steve.  
 16 "Hey dude. I just talked to, ah,  
 17 the ISO."  
 18 Then they go on, and two lines down Ray again says.  
 19 "And that's not a real schedule,  
 20 dude. That's a ricochet  
 21 schedule, is what they call it."  
 22 This is talking about this trade that we've just been  
 23 discussing.  
 24 And Steve said,  
 25 "So what does that mean, it's  
 26 not going to work?"  
 27 Constellation says,  
 28 "Yeah, they're not accepting it."  
 0094 Steve says.  
 01 "Oh man, for what hour?"  
 02 Constellation, Ray says.  
 03 "Ah, well, any of them, I  
 04 don't think."  
 05 And it turned out that actually the ISO did take  
 06 one of the two hours.  
 07 Steve says.  
 08 "Shoot. Why is it a Ricochet  
 09 schedule?"  
 10 Constellation,  
 11 "[Because] they ..."  
 12 "They" would be LADWP,  
 13 "... said it's coming from LA.  
 14 It's coming from the South."  
 15 CHAIRMAN DUNN: Let me interrupt.  
 16 Do you think that the "they" refers to ISO;  
 17 doesn't it?  
 18 MR. DRIVON: Yes. Ray is informing Steve of a  
 19 problem that has occurred with respect to this power schedule,  
 20 and his, Ray's, conversation with the ISO. Because NEG is a  
 21 counterparty, the schedule has not been accepted for at least  
 22 one of the hours and somebody is going to take --  
 23 CHAIRMAN DUNN: Not accepted by the ISO?  
 24 MR. DRIVON: ISO, and somebody is going to come  
 25 up short on this transaction if the ISO doesn't take it for  
 26 sinking in the ISO control area. And Ray is trying to explain  
 27 to Steve what kind of a problem they've got.  
 0095 And Steve says,  
 01 "It's coming from the South,  
 02 and it's going North."  
 03

04 Ray says,  
05 "Yeah, and they ..."  
06 that's the ISO.  
07 "... said that LA is just  
08 bouncing it off its tie point  
09 and that's illegal. Or I don't  
10 know ... he didn't mention that  
11 it's illegal, but he said that  
12 it's against all protocol."  
13 Then there's -- I mean, I don't want to read  
14 this entire 40-page --  
15 CHAIRMAN DUNN: I agree with you. Let's just go  
16 through it quickly.  
17 The next phone call is from Steve to LADWP;  
18 correct?  
19 MR. DRIVON: Except -- that's correct. Page 98.  
20 CHAIRMAN DUNN: Correct. And it concludes, and I  
21 am on Page 97, actually, Mr. Drivon. It concludes with LA  
22 saying,  
23 "Okay have the ISO call me. I  
24 don't know anything about a  
25 ricochet schedule."  
26 MR. DRIVON: Correct.  
27 CHAIRMAN DUNN: So, now we have Steve from NEG is  
28 told by LADWP to just have the ISO call LADWP; correct?  
0096  
01 MR. DRIVON: That's correct.  
02 But the next conversation we have is Steve  
03 talking to the ISO. That's Page 98.  
04 And if we go down, Steve says I guess we've got a  
05 problem  
06 And then, about a third of the way up from the  
07 bottom, Steve says,  
08 "Ok. Is there a problem with  
09 that schedule."  
10 CHAIRMAN DUNN: And the next sentence,  
11 too.  
12 MR. DRIVON: In fact, you can blow up to the end  
13 of the page.  
14 Boyd at ISO says,  
15 "Yes. It's a ricochet schedule  
16 off the tie point."  
17 Steve,  
18 "Um, how can we correct that?"  
19 Boyd says,  
20 "If BPA ..."  
21 That's Bonneville,  
22 "... could show that schedule,  
23 I would have no problem with it,  
24 of it. I need a source and a  
25 sink."  
26 CHAIRMAN DUNN: Let me stop you there.  
27 This goes back to what you said is, they sent up  
28 178, but BPA was only taking 128.  
0097  
01 MR. DRIVON: Right.  
02 CHAIRMAN DUNN: They weren't sinking 178 in BPA's  
03 territory?  
04 MR. DRIVON: There was a source for 178 in LA,  
05 Palo Verde. There was a sink for 128 of that in the BPA control  
06 areas.  
07 CHAIRMAN DUNN: Sink, in essence being used?  
08 MR. DRIVON: It got distributed there. And  
09 something happened to it there. Maybe it got sent somewhere  
10 else, but at least they called it a sink there.

11 That left 50 megawatts of difference for which  
 12 there was no sink that the ISO could see.  
 13 CHAIRMAN DRIVON: Okay.  
 14 MR. DRIVON: Steve says,  
 15 "Ah, I believe the source ..."  
 16 And Boyd says,  
 17 "LA is the source."  
 18 Then we go to the next page. If you'd blow up  
 19 the first two paragraphs, I guess.  
 20 Boyd says,  
 21 "Ok LA has 178 megawatts going  
 22 Northbound. BPA shows 128 going  
 23 into their control area. Period.  
 24 Because the 50 megawatts from  
 25 Constellation is being  
 26 ricocheted off the tie, coming  
 27 back down netting it out. I do  
 28 not do ricochet schedules off  
 0098 the tie points. They are  
 01 invalid ... it's against all  
 02 policies and procedures."  
 03 Then Steve says,  
 04 "... I'm not clear how it is  
 05 ricocheting, but I guess I'll  
 06 have the guy at LA ..."  
 07 and they continue to have a discussion. Boyd says,  
 08 "Ok. LA has prescheduled 128  
 09 ... going North. Ok? They  
 10 increase that wheel by 50  
 11 megawatts making it the 178  
 12 megawatts. Ok? 50 megawatts  
 13 comes back down from  
 14 Constellation. It ricochets  
 15 off at Malin. BPA does not see  
 16 that going into their control  
 17 area or coming back out of  
 18 their control area."  
 19 And then he ties to explain it some more, and  
 20 then, down to the fourth entry from the bottom, Boyd says,  
 21 "It's plain and simple -- you  
 22 know what a ricochet schedule is."  
 23 And the next conversation is Steve talking to LA,  
 24 and that's on 100.  
 25 CHAIRMAN DUNN: Go to the bottom third.  
 26 MR. DRIVON: Actually, about half, where it says:  
 27 "(LA) Ok." Down to the bottom  
 0099 This is LA. It's someone named Solis, and I  
 01 believe that person may actually be Al Solis, S-o-l-i-s, who is  
 02 with LADWP Marketing, I think. But I just have him or her  
 03 identified as Solis here, and maybe it's a different person.  
 04 LA says,  
 05 "Ok. Well how does that happen?  
 06 I don't understand. Ok look.  
 07 Let me just -- let me understand  
 08 this. I'm buying this from you  
 09 at Palo Verde."  
 10 "(Steve) Yes sir."  
 11 "(LA) IID's generation."  
 12 CHAIRMAN DUNN: That's Imperial.  
 13 MR. DRIVON: Imperial Irrigation District's  
 14 generation. That's where we showed on that first thing, that  
 15 first little line.  
 16 "(Steve) Yes."  
 17

18 "LA) Correct? And I am selling  
19 it to you at -- COB."  
20 "(Steve) (pause) Ok."  
21 Answer,  
22 "Is that correct?"  
23 "(Steve) Well, actually it's,  
24 it's not ... yes, we're ... we're  
25 ... I'm buying it back from you,  
26 I guess is the best way to ..."  
27 "(LA) Well, I don't know ...  
28 Don't say 'back' -- don't say  
0100 'back' -- because back is a bad  
01 thing. Just say 'Listen -- I'm  
02 buying this from you, IID's  
03 generating it, I'm buying it  
04 from you at Palo Verde.' Is  
05 that correct?"  
06 Moving on to 101. Blow up the first half of the  
07 page down to the end of that long answer.  
08 "(Steve) I'm ..."  
09 "(LA) Yes!"  
10 "(Steve) I'm selling it to you  
11 at Palo Verde."  
12 "(LA) That's correct."  
13 "(Steve) I'm buying it back  
14 from you at ..."  
15 "(LA) No -- I'm telling you  
16 not to say the word 'back'!  
17 I am selling you 50 megawatts  
18 at COB."  
19 "(Steve) Ok."  
20 "(LA) Is that correct?"  
21 "(Steve) Um, yes."  
22 "(LA) Ok, that's all -- tell  
23 that to the ISO. I'm selling  
24 you 50 megawatts at COB. What  
25 you do with them at COB, I  
26 don't know, you know ... Now  
27 if you're buying them at COB  
0101 and you're shipping them down  
01 South, then that could be a  
02 problem. Ok? But if, you know,  
03 I don't know what you're doing  
04 with them at COB, but I'm  
05 selling you 50 megawatts of my  
06 generation ... you know, it  
07 could be your generation, it  
08 doesn't matter. It's my  
09 generation -- once I buy them  
10 from you, they're mine -- I  
11 own 'em."  
12 One of the interesting points here is, we have  
13 had this looked at by people who are expert in the trading of  
14 power, that are consultants to the committee and others. And  
15 they describe this activity as speculative trading.  
16 And it is our understanding that speculative  
17 trading is something that organizations such as LADWP should not  
18 be engaging in.  
19 I put that in for purposes of completeness  
20 because we asked those questions and were given that information  
21 by consultants to the committee who have a lot of experience  
22 doing it.  
23 We can go to the next page.  
24

25 CHAIRMAN DUNN: Why don't you finish up. Back to  
 26 101.  
 27 MR. DRIVON: The bottom half.  
 28 CHAIRMAN DUNN: Where it says "Now," second from  
 0102 the bottom. I just want to finish out this conversation. It  
 01 goes to next page.  
 02 MR. DRIVON: LA says,  
 03 "Now, that's what I told Boyd,"  
 04 That's the man from the ISO.  
 05 "I don't know how Constellation  
 06 enters this deal, what you're  
 07 doing with them -- straighten  
 08 them out with Boyd, but Boyd  
 09 accepts my schedule."  
 10 "(Steve) And you think he's  
 11 going to accept this deal --  
 12 accept it for hour 23."  
 13 Next page, the first several lines plus the  
 14 response.  
 15 "(LA) Well, that's the last  
 16 word that I had with him, so  
 17 verify with him. You just tell  
 18 him ... I mean here's what I'm  
 19 telling you. The reason I'm  
 20 telling you this is because  
 21 this is the way it's going to  
 22 go clear. You are buying 50  
 23 megawatts from me ... at COB.  
 24 As far as you're concerned, I'm  
 25 generating them, because I  
 26 bought your megawatts and  
 27 they're mine."  
 28  
 0103 "(Steve) Ok ... I understand."  
 01 The next phone conversation that we have a  
 02 transcript of is one that took place at 2:00 o'clock in the  
 03 morning on the 12th. And this is conversation of Steve to LA.  
 04 I think I want page 104.  
 05 CHAIRMAN DUNN: Actually, before you do that, I  
 06 want to touch upon a few things on 103. Specifically, I'm  
 07 referring to, just to touch base here, the continuing, ongoing  
 08 conversations here, Steve to LA,  
 09 "Hey I talked to Constellation  
 10 and they were going to call the  
 11 ISO and try to clean it up."  
 12 "(LA) Yeah."  
 13 "(Steve) I'm sorry this thing  
 14 got so wacked out."  
 15 I just wanted to set the stage that we're back  
 16 with dealing with Steve and LA.  
 17 Mr. Drivon.  
 18 MR. DRIVON: Okay. We go to the top of the page,  
 19 first two, Steve and then LA, Steve says,  
 20 "Ok, but I mean, you know, for  
 21 the hours 24 through -- I mean  
 22 -- it's working out fine for  
 23 everybody, the only problem,  
 24 the people that seem to be  
 25 having a problem is the ISO."  
 26 "(LA) Yeah, that's correct."  
 27 Then that conversation continues, and then on  
 28  
 0104 page 106. It's not a page. It's just a computer way for us to  
 01 get into the computer, Constellation, that's Ray --

03 CHAIRMAN DUNN: I'm going to do it to you again,  
 04 Mr. Drivon. My apologies.  
 05 Back to 104. Middle of the page. It starts with  
 06 Steve says,  
 07 "Yeah, he was."  
 08 "(LA) And that's why I said --  
 09 that's why it was very important  
 10 for me, when I was telling you  
 11 that, don't say you're buying  
 12 back only because -- the  
 13 reason ..."  
 14 You see that part?  
 15 MR. DRIVON: Yes  
 16 CHAIRMAN DUNN: And it goes on,  
 17 "(Steve) Right."  
 18 "(LA) The reason, the reason  
 19 that -- those guys look at  
 20 those things kinda different.  
 21 Is in reality, and reason I  
 22 kinda said that is that it's  
 23 very important that you're  
 24 buying from me you know, not  
 25 this back stuff or whatever ..."  
 26 "(Steve) I ... I understand."  
 27 "(LA) It kind of throws  
 28 problems into the issue."

0105  
 01 MR. DRIVON: He goes on to try to reinforce that  
 02 same point with Steve.  
 03 If you remember, Senator, what happened was, down  
 04 at Palo Verde, in the second stage of this series of  
 05 transactions, LA sold 50 megawatts to NEG. It got up to Malin  
 06 and at that point, NEG purchased 50 megawatts from LA. And LA  
 07 is trying to say in here, maybe it wasn't the same 50 megawatts.  
 08 The e-mail, if you recall, says that they  
 09 arranged for LA to wheel 50 megawatts to Malin for them. NEG  
 10 made that arrangement.  
 11 The term "wheel" in the industry means transport.  
 12 And so, NEG's guy is exhibiting his confusion here by saying,  
 13 wait a minute, you know, we sold you 50 meg at Palo Verde, and  
 14 we're buying 50 meg back from you at Malin. And the LA guy is  
 15 characterizing the transaction in a different way.  
 16 So, on 106, this is a conversation at 2:07 in the  
 17 morning. Constellation, Ray, called Steve. And you go down to  
 18 where it says,

19 "(Constellation) He's not  
 20 going to let it go."  
 21 He's talking about Boyd.  
 22 "It's, ah, basically what he's  
 23 saying is that you because it's  
 24 coming in from LA, and LA tries  
 25 to do this all the time -- I'm  
 26 just repeating what he's told  
 27 me --"

28 Then we can go on down,  
 0106  
 01 "(Steve) Ok."  
 02 "(Constellation) Uh, that he  
 03 allowed it to go the first  
 04 time, because he knows that  
 05 they've tried this every time,  
 06 like every once in a blue moon  
 07 they try it ..."  
 08 "(Steve) Um Hm."  
 09 "(Constellation) ... just to

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10 see if it will work, but what  
11 he's looking for basically is to  
12 see that it goes into his  
13 Northwest intertie and comes  
14 back out again, and BPA did not  
15 see the schedule. As far as the  
16 transmission coming in through  
17 their system ..."  
18 The bottom of the page,  
19 "(Constellation) Basically what  
20 it is, is Boyd is being ...  
21 what he's saying is it's  
22 principle and he's not  
23 allowing it because basically  
24 they are going to be able to  
25 buy at zero dollars in the  
26 South or whatever, I guess  
27 they could buy ... I don't  
28 know. Even though they have  
0107 rights, he's like, it's against  
01 principle so ..."  
02 Then I want to go to the next page, and the  
03 sentence starts on the page before, but it says, it's  
04 Constellation,  
05 "I'm writing letters to my ..."  
06 and then picking up at the top of the page,  
07 "superiors that LA has tried to  
08 do this again and I'm not going  
09 to allow it. I allowed it one  
10 hour,"  
11 he's reporting what Boyd told him,  
12 "but I'm not going to allow it  
13 again, is what he's saying."  
14 "(Steve) Cause as far as LA's  
15 concerned, we can do this all  
16 night."  
17 "(Constellation) Yeah."  
18 The next conversation is Steve from NEG talking  
19 to -- in terms of time, it's not next. This one was at 46  
20 minutes after midnight. Next in terms of what they sent us.  
21 Steve is talking to LA.  
22 CHAIRMAN DUNN: This conversation actually  
23 occurred earlier in this sequence, but is how it was given to  
24 us.  
25 MR. DRIVON: It was given to us this way.  
26 The last page was page 18 of the FAX. This is  
27 Page 19 of the FAX.  
0108 Again, between Steve and LA, in the middle of the  
01 page where it says,  
02 "(Steve) Apparently he,"  
03 referring to Boyd,  
04 "is saying it's illegal to do  
05 the North to South, and I ...  
06 I don't really know man, it's a  
07 little bit over my head when  
08 you start talking all this  
09 transmission stuff, but you  
10 know I'm saying that we're  
11 good to go."  
12 They at that point were -- apparently this is  
13 after the second hour. Oh, I'm sorry. I'm sorry.  
14 The call was made at 2:49 in the morning. The  
15 duration was 5 minutes and 52 seconds. I apologize. No,  
16

17 8:02:49 in the morning.  
 18 CHAIRMAN DUNN: Keep going.  
 19 MR. DRIVON: The next is Dave Pierce to Steve.  
 20 This is actually 8:02:49 in the morning.  
 21 Dave Pierce is an NEG power trader. Steve is an  
 22 energy power trader, actually now working for somebody else.  
 23 Dave is calling to tell Steve that he's going to come in and  
 24 help him, so Dave is calling from someplace else. And Dave  
 25 says,  
 26 "Hey, I'm coming in to, ah, see  
 27 if I can help you out before,  
 28 ah, Mark comes in,"  
 0109  
 01 et cetera, and they just talk about it. And then Dave says,  
 02 "Did you have a good night?"  
 03 And Steve says,  
 04 "Yeah, I got into a little bit  
 05 of trouble with LA though."  
 06 "(Dave) What happened?"  
 07 "(Steve) Well, um, I was  
 08 messing around, you know, doing  
 09 our little deal -- we were  
 10 selling to ah, SRP, right?"  
 11 "(Dave) Uh huh."  
 12 "(Steve) So, you know, they  
 13 were kind of getting big and  
 14 they were trying to, you know,  
 15 walk me down and stuff, so  
 16 anyway, I'm going around to  
 17 check it out and I got ahold of  
 18 Ray, you know, at Constellation,  
 19 so he said, You got anything  
 20 going at PV ..."  
 21 That's Palo Verde,  
 22 "So I said, ah, well, yeah,  
 23 what are you after? So he goes  
 24 well, I could use 50 megawatts.  
 25 So I said cool, you know, let's  
 26 do it! So, ah, you know, I  
 27 talked to IID, you know we had  
 28 that forever, right? I talked  
 0110  
 01 to LA and I said LA, you know,  
 02 ah, can you send it up North?  
 03 Yeah, I'll send it up to Malin  
 04 for twenty-five bucks. So I  
 05 said cool, man. So I'm selling  
 06 to Ray, so I'm buying it for  
 07 seventy-five, right?"  
 08 "(Dave) Uh huh."  
 09 At 110, top of the page,  
 10 "(Steve) Seventy. I'm selling  
 11 it to L.A. at seventy. I'm  
 12 buying it back from LA at 95  
 13 and I'm selling it at 150. So  
 14 I'm working it, right? We're  
 15 looking good."  
 16 "(Dave) Yeah nice."  
 17 Then down about a third of the way from the  
 18 bottom, Steve says, still talking to Dave,  
 19 "Well, I thought it was cool  
 20 and as far as LA was concerned,  
 21 it was fine. But couldn't  
 22 talk the ISO into it cause we'd  
 23 still be doing it. It's been

24 printing like, really good  
 25 money. So we're in man."  
 26 Then at top of 111, we get an explanation of what  
 27 kind of bid Constellation was making. Steve, still talking to  
 28 Dave, says,  
 0111 "Yeah what they are actually  
 01 doing is they were putting in  
 02 supplemental bids ... you know  
 03 what I mean?"  
 04 Then he talks about Econ Power, and maybe you  
 05 know what Econ Power is; I don't. These folks, I'm sure, do. I  
 06 don't know what it means, but they go on talking, these two  
 07 traders, still talking to each other.  
 08 On Page 112, middle of the page, Steve says,  
 09 "I just don't see what's wrong  
 10 with LA sending it North."  
 11 "(Dave) Well, cause it's a  
 12 ricochet. You can't take power  
 13 out of California and send it  
 14 right back in. That's the  
 15 definition of a ricochet."  
 16 Steve says,  
 17 "Well isn't NP 15 in  
 18 California?"  
 19 And Dave says, "Yes." Steve says,  
 20 "Well the point is, I guess  
 21 what Constellation really  
 22 should have done is a buy  
 23 resale with somebody up that  
 24 way."  
 25 "(Dave) Yeah, definitely."  
 26 Then Page 113 came through as a blank in the FAX.  
 27 I don't know whether there's -- this is the way we got it, and I  
 0112 don't know whether there's anything on that page or not. We  
 01 tried to clear it up, but so far haven't been able to.  
 02 On Page 114 we have a call from Dave Pierce to  
 03 Boyd at the ISO.  
 04 CHAIRMAN DUNN: Just zero in on the key points,  
 05 because I know we need to move on.  
 06 MR. DRIVON: This is a discussion here between  
 07 Dave at NEG and Boyd at the ISO, trying to understand what ISO  
 08 means by Ricochet.  
 09 At the bottom of that page, Dave says,  
 10 "Just wanted to make sure I  
 11 understand how ricochets work  
 12 and when it ... and in, you  
 13 know, that case it wouldn't be  
 14 a ricochet."  
 15 Then at top of the next page, you can go down to  
 16 the end of that conversation,  
 17 "(Dave) Um, my understanding of  
 18 ricochet is if the power is  
 19 generated anywhere in  
 20 California it cannot be pulled  
 21 back to California in the sup  
 22 market."  
 23 That would be supplementary.  
 24 Boyd at the ISO.  
 25 "Not through a tie point, an SC  
 26 to SC trade."  
 27 That's scheduling coordinator.  
 0113 "(Dave) It can't be, right?"  
 01

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02 That's the definition of  
03 ricochet, right?"  
04 Then Dave goes on to say,  
05 "I just want to make sure I  
06 understand."  
07 "(Boyd) Well, no, people  
08 ricochet off of banks, okay?"  
09 Dave says, "Uh hm," whatever that is.  
10 Boyd at the ISO,  
11 "Ah, you find them like SC to SC  
12 trades,"  
13 he makes a ricochet sound effect,  
14 "Okay? What happened last  
15 night is it was a ricochet off a  
16 tie point, ok?"  
17 At the bottom of the page, the last three  
18 entries, Dave says,  
19 "I see what you're saying. So  
20 it was never delivered to  
21 Malin?"  
22 Boyd says,  
23 "So it goes up to Malin and  
24 right back down."  
25 "(Dave) Oh so you're saying  
26 that this power was never  
27 delivered outside of California."  
28 "(Boyd) That is correct."  
0114  
01 Then 116, the bottom third of the page,  
02 "(Boyd/ISO) As soon as I pick  
03 up that 50 megawatt schedule  
04 from Constellation, that say  
05 my source is LA. I say, oh,  
06 well that's interesting."  
07 This is Boyd at the ISO talking,  
08 "So, what does LA do? They  
09 increase their northbound  
10 wheel. Ok? They've done this in  
11 the past, and what they try to  
12 do is just slide it through,  
13 because what happens at  
14 checkout, that additional 50  
15 megawatt schedule that just  
16 went North gets zeroed out by  
17 the 50 coming South."  
18 "(Dave) Oh jeez."  
19 "(Boyd) So checkout, I will  
20 check out with BPA, ok?"  
21 "(Dave) Yeah."  
22 "(Boyd) Cause it, the, my  
23 control number is the same. It  
24 just, because, it's a net out,  
25 it's a net out schedule. So it  
26 slides by several scheduling  
27 coordinators."  
28 CHAIRMAN DUNN: Mr. Drivon, let's do this in the  
0115  
01 interest of time. I know there's a few other conversations, and  
02 then, starting on 122 is the conversation between Mr. Pierce and  
03 another individual at the ISO.  
04 Just summarize that conversation.  
05 MR. DRIVON: What that is, Senator, Boyd gave  
06 Mr. Pierce to his supervisor to discuss what was going on,  
07 because Dave Pierce was still trying to figure out how he could  
08 do these trades without getting the schedules declined by the

09 ISO.  
10 And what ensued thereafter, and is captured by  
11 this recording, is the supervisor saying, well, you know, I  
12 can't tell you how to do these trades. I can't instruct you on  
13 how to do it, but if you do it this way, it's going to be okay.  
14 And if you do it that way, it's not going to work. And if you  
15 have any problem, call me back.  
16 So, you know, it was essentially an instructional  
17 session, with the ISO telling NEG how to avoid having the kind  
18 of problem that they had, is what it is.  
19 CHAIRMAN DUNN: Mr. Drivon, this morning I  
20 believe you were contacted by a representative of LADWP  
21 regarding another transcript.  
22 Can you share the circumstances associated with  
23 that?  
24 MR. DRIVON: Actually, I contacted them. And I  
25 spoke on the telephone with, I believe, Mr. Swartz --  
26 Mr. Snyder. I'm sorry, Mr. Snyder.  
27 I asked him -- I told him that we understood that  
28 they had the transcript of a recording, and that they had a  
0116 recording, and that they intended to play that recording. And I  
01 requested a copy of the transcript and a copy of the recording.  
02 There was some back and forth. And the end came  
03 that they would deliver a copy of the recording to us at your  
04 office not later than 12:00. I believe it arrived sometime  
05 between 11:00 and 12:00 in our office.  
06 And it was my understanding that we would get a  
07 copy of that approximately contemporaneous with copies that were  
08 provided to at least some of the press.  
09 I expressed my displeasure at not being provided  
10 a copy of that transcript if they intended to use that during  
11 these proceedings. And then they were informed that we also  
12 wanted to listen to a tape recording if they intended to use it.  
13 We were ultimately told that they would play the  
14 tape recording for us. We could meet at a restaurant of our  
15 choice, but they would play it only after we had agreed in  
16 writing to allow them to play the recording here.  
17 We, of course, did not accept that. I didn't  
18 feel that this committee could obligate itself to present that  
19 kind of material without knowing what was in the poke.  
20 And we have to date not heard that recording. I  
21 suspect that they have it here. They claim that they have one  
22 copy of that recording, and because they only had one copy of  
23 it, they can't give it to us.  
24 I, Senator, would like to request that you  
25 instruct the Sergeant to take custody of that recording at this  
26 time.  
27  
28 CHAIRMAN DUNN: Let me ask you a question,  
0117 Mr. Drivon.  
01 Was LADWP served with subpoena for various  
02 documents associated with our investigation?  
03 MR. DRIVON: They were.  
04 CHAIRMAN DUNN: When? Approximate time.  
05 September?  
06 MR. DRIVON: They were served with a subpoena  
07 approximately 4:00 o'clock, 4:30 o'clock in the afternoon,  
08 Tuesday, the 18th of September, 2001.  
09 CHAIRMAN DUNN: In your opinion, is the  
10 transcript that we now have been provided a copy of, which is  
11 not the one that was on the screen, and the recording embraced  
12 by the subpoena served on LADWP last September?  
13 MR. DRIVON: Yes.  
14 CHAIRMAN DUNN: Okay. Until today, it's not been  
15

16 produced to this committee; is that correct?  
 17 MR. DRIVON: Correct.  
 18 CHAIRMAN DUNN: All right.  
 19 Chris, anything to add?  
 20 MR. SCHREIBER: I think I would just add that the  
 21 transcript that they did provide is not substantially similar,  
 22 and probably not similar at all to the transcript that we just  
 23 finished going over.  
 24 MR. DRIVON: Which is not, I don't think,  
 25 surprising or importing anything improper, because they would  
 26 have tapes of conversations different than tapes of  
 27 conversations that involved NEG traders and not them. So, I  
 28 wouldn't expect them to have all of the conversations that we  
 0118 just went over.  
 02 I heard Counsel a moment ago say that I was  
 03 incorrect with respect to having previously been provided this  
 04 transcript, and perhaps I am.  
 05 CHAIRMAN DUNN: Okay.  
 06 Before we go to LADWP, any questions from the  
 07 committee?  
 08 SENATOR MORROW: Yes, I want to clarify that.  
 09 Mr. Schreiber, I guess you've looked at this new  
 10 transcript that we were provided with respect to whatever  
 11 conversations that may be recorded here between LADWP and NEG,  
 12 the source of our previous recording.  
 13 MR. SCHREIBER: Right.  
 14 SENATOR MORROW: Did they vary? In other words,  
 15 those would have been tape recordings of the same conversations  
 16 from two different areas. Did they vary in terms of the  
 17 transcript?  
 18 MR. SCHREIBER: Yes, they did. I mean, I didn't  
 19 expect the LADWP transcript to include conversations between  
 20 Constellation and NEG.  
 21 My expectation, though, was that the LADWP/NEG  
 22 transcript would match up with the NEG/LADWP transcript. And  
 23 they appear to be taken at different times.  
 24 The LADWP transcript, in addition, also seems to  
 25 contain some kind of running interjection by Dan Kurowski,  
 26 which, just from a formatting perspective, I couldn't figure out  
 27 whether or not that was a contemporaneous interjection, or  
 28 whether or not that was a written interjection intended to  
 0119 explain what the traders were talking about on the tape.  
 02 Senator Morrow, the bottom line, I think, is that  
 03 the LADWP transcript is taken from a different time than the  
 04 transcripts that we received from NEG.  
 05 SENATOR MORROW: Thank you.  
 06 CHAIRMAN DUNN: Other questions from the  
 07 committee?  
 08 Okay, we're going to give everybody five minutes,  
 09 then we'll turn right to LADWP for their input on this issue.  
 10 We need to give Evelyn a few minutes. So, recess for  
 11 approximately five minutes.  
 12 [Thereupon a brief recess  
 13 was taken.]  
 14 CHAIRMAN DUNN: Mr. Pratt, why don't we put all  
 15 the LADWP officials who are going to be offering comments,  
 16 testimony, et cetera, to the committee under oath all at the  
 17 same time, for whomever is going to be commenting.  
 18 [Thereupon Witnesses STANTON  
 19 J. SNYDER, MARK S. WARD, and  
 20 KENNETH A. SILVER all swore  
 21 to tell the truth, the whole  
 22 truth, and nothing but the

23 truth.]  
 24 CHAIRMAN DUNN: Okay. I'll direct the first  
 25 question, really just a broad introduction more than anything  
 26 else, to Mr. Ward. And I do that simply because, Mr. Ward, it  
 27 was your --  
 28 MR. SNYDER: Excuse me, Senator.  
 0120  
 01 You said we'd be given an opportunity to respond.  
 02 CHAIRMAN DUNN: Mr. Snyder, you will get that  
 03 opportunity.  
 04 MR. SNYDER: I'd like to do one procedural point  
 05 first, if you would indulge me.  
 06 CHAIRMAN DUNN: Yes, you may.  
 07 MR. SNYDER: Thank you.  
 08 In your Counsel's last comments, he seemed to  
 09 imply that DWP had not been responsive to the subpoena in terms  
 10 of tapes.  
 11 With all due respect, he is incorrect. I would  
 12 refer this committee -- as you know, we've had various discovery  
 13 disputes, but I would refer this committee to the March 4th,  
 14 2002 hearing that was taken here in the Capitol. And I would  
 15 specifically refer the committee to Pages 34 through 37.  
 16 I don't know if you want me to read it or not,  
 17 but I'd like to. Essentially, we had an agreement, it's my  
 18 understanding and I think the transcript shows that, that I  
 19 think we had, what 120,000 hours of tapes, or 26,000 hours of  
 20 tapes.  
 21 The agreement was that the committee could come  
 22 down and listen to our tapes -- which in fact they have;  
 23 Mr. Chavez came down -- and we would make copies of any tapes  
 24 that they requested.  
 25 Now, it is my understanding that the committee  
 26 did come down. They did listen to our tape recordings, and it's  
 27 my understanding they did not request copies of anything when  
 28 they looked at it, and that would have been approximately four  
 0121  
 01 to six weeks ago.  
 02 So, with all due respect, Senator, we have  
 03 complied with the subpoena, and we have complied with the  
 04 agreement, at least that we understood, being on the page that  
 05 was reflected in our hearing in March.  
 06 CHAIRMAN DUNN: Okay. Is that your procedural  
 07 note?  
 08 MR. SNYDER: Yes.  
 09 CHAIRMAN DUNN: Okay, Mr. Ward, I'm back to you.  
 10 The reason I start with the general question to you is because,  
 11 obviously, it was your declaration that we were concerned about  
 12 following the receipt of the e-mail from NEG.  
 13 And so, let me open it up first as to whether, in  
 14 fact, you heard the recitation of the transcript, et cetera,  
 15 from Mr. Drivon, and some input by Mr. Schreiber? I'll just  
 16 open it up to you.  
 17 Is there statements that LADWP wishes to make at  
 18 this time, generally, in the response?  
 19 MR. WARD: With your indulgence, could -- I have  
 20 a prepared opening statement.  
 21 CHAIRMAN DUNN: That's fine.  
 22 MR. WARD: Thank you, sir.  
 23 I am pleased to have the opportunity to speak on  
 24 behalf of LADWP to provide some much needed clarification on a  
 25 matter where confusion has reigned.  
 26 During the state's energy crisis in 2000-2001,  
 27 the Los Angeles Department of Water and Power went through  
 28 extraordinary measures to help keep the lights on in California.

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In doing so, LADWP played by the rules. We did not say no to any practical and reasonable request. We did not impose onerous conditions or make profits beyond what was reasonable. In a time of emergency, we responded as a good neighbor.

Now that the emergency is over, the State of California is in a time of reckoning. We all want to know what happened, and be sure that those who took advantage of the crisis are exposed. LADWP supports your committee in this inquiry. It has been cooperative with your requests for documents and other information concerning its actions at the time.

To be clear, LADWP's General Manager, David Wiggs, stated publicly this week that the Los Angeles Department of Water and Power did not engage in any trading of power across state lines to avoid price caps. In order to eliminate the false rumors, innuendoes, and accusations, we are providing the following explanation.

Earlier this week, David Duran indicated that you would like DWP to provide your committee with its definition of the term Ricochet. Our definition of Ricochet is not the same as Enron's. Enron hijacked that term Ricochet. It is one of those colorful terms like Death Star and Fat Boy that surfaced when secret Enron documents were made public.

The word Ricochet, coincidentally, was also used in an e-mail from someone at PGET, Pacific Gas and Electric Trading, which appears to relate to a November 11th, 2000 transaction between LADWP and PGET. That transaction could more appropriately be called or characterized as a bounce-back. A

bounce-back, or a true Ricochet, is a trade of electricity at a control area boundary, in this case, Malin, but the electricity does not cross the ISO boundary.

What happened between LADWP and PGET is far different from Enron's use of the word Ricochet, because Enron moved the power outside of the state grid, apparently sold it to a straw buyer, and then bought the power and sold it at a higher price in California.

It appears from a tape recording documenting the November 11th, 2000 transaction that PGET had a problem. PGET bought 50 megawatts from Imperial Irrigation District at Palo Verde and needed to transport it to Northern California during a time of crisis. In order to accommodate PGET, DWP purchased the power, transported it to Malin, and resold the power to PGET at Malin.

The November 11th, 2000 transaction was completed consistent with LA'S good neighbor policy of playing by the rules, being a good neighbor, not saying no to a reasonable request, and not imposing unreasonable terms. DWP's gross proceeds from this transaction were \$1,250.

The tape recording verifies that the ISO was informed of the transaction. The ISO had no objection. When the PGET proposed that the transaction be continued for an additional hour, the ISO would not allow the transaction to continue.

Transcription of the tape is attached to the statement, and I would like to submit that to you. We encourage your committee to examine it. It fully supports LADWP's

characterization of this transaction, and of LADWP's underlying philosophy, to serve as a good neighbor to the people of California.

We are proud of how LADWP conducts its business during this unprecedented crisis, and we are prepared to answer your questions.

CHAIRMAN DUNN: Anything else you want to add,

08 Mr. Ward?  
09 MR. WARD: No, sir.  
10 CHAIRMAN DUNN: Okay.  
11 I know that I have some questions. I know that  
12 Senator Morrow has some questions, and Senator Bowen may also  
13 have as well.  
14 Let me start with just a few, and then I'll turn  
15 it over certainly to Senator Bowen and Senator Morrow.  
16 Mr. Ward, in filling out your declaration that I  
17 believe was signed in May of this year, if I'm not mistaken, can  
18 you tell me and the committee what investigation engaged in to  
19 develop the answers that you provided in this declaration?  
20 MR. WARD: In providing the answer on this  
21 declaration, I reviewed my instructions to my traders at the  
22 time. I also had interviews with the supervisor, or the  
23 supervisors of my traders, and we also interviewed our traders  
24 as to whether they were aware of any transactions that we had  
25 participated in with these with these interrogatories.  
26 CHAIRMAN DUNN: What traders by name did you  
27 interview, Mr. Ward?  
28 MR. WARD: I interviewed Mr. Randolph Krager. I  
0125 interviewed Mr. Daniel Kurowski. I interviewed Mr. Joel  
01 Caderro. I interviewed Mr. Mike Webster.  
02 CHAIRMAN DUNN: Is that the universe of traders  
03 at LADWP?  
04 MR. WARD: Those are my lead traders on my floor.  
05 CHAIRMAN DUNN: And you conducted those  
06 interviews personally for purposes of responding to our  
07 interrogatories?  
08 MR. WARD: Yes, sir.  
09 CHAIRMAN DUNN: What documents did you review in  
10 preparation of the answers to the interrogatories?  
11 MR. WARD: I looked at my e-mailed instructions  
12 to the traders over time and from year 2000 through 2002.  
13 CHAIRMAN DUNN: And what's the volume associated  
14 with those documents you've just identified?  
15 MR. WARD: I believe there's approximately 20  
16 documents.  
17 CHAIRMAN DUNN: And the time period again is  
18 what?  
19 MR. WARD: From year 2000 through the beginning  
20 of 2002.  
21 CHAIRMAN DUNN: You'll have to pardon me, but I  
22 forgot his name. You saw the transcript that we went through in  
23 detail and the transcript we received from NEG?  
24 MR. WARD: Yes, sir.  
25 CHAIRMAN DUNN: There is an individual from LADWP  
26 identified in there. Do you recognize that individual?  
27 MR. WARD: Yes, sir.  
0126 CHAIRMAN DUNN: Who is it.  
01 MR. WARD: Mr. Al Solis is one of my marketers.  
02 CHAIRMAN DUNN: And is he still at LADWP?  
03 MR. WARD: Yes, sir.  
04 CHAIRMAN DUNN: Was he interviewed in an effort  
05 to respond to these interrogatories?  
06 MR. WARD: He was not interviewed for -- for the  
07 interrogatories.  
08 CHAIRMAN DUNN: Why?  
09 MR. WARD: Well, at the time of the interview, he  
10 had transferred to another section.  
11 CHAIRMAN DUNN: But he was still within LADWP?  
12 MR. WARD: Yes, sir.  
13 CHAIRMAN DUNN: And you knew he was a trader?  
14

15 MR. WARD: He's no longer a trader.  
16 CHAIRMAN DUNN: I understand that, but you knew  
17 he was at the time covered by the interrogatories?  
18 MR. WARD: Yes, sir.  
19 CHAIRMAN DUNN: Are there other such traders,  
20 whether current or past, that were not interviewed in preparing  
21 the answers to these interrogatories?  
22 MR. WARD: Yes, sir.  
23 CHAIRMAN DUNN: Who else?  
24 MR. WARD: Um, I think I would have is to take a  
25 look, if I were going to give you an exhaustive list. But Mr.  
26 Champion, Mr. Larson, Mr. Saginian, Mr. Jose Afkari. And I  
27 would have to go back and look at my roster.  
28 CHAIRMAN DUNN: The only ones that actually were  
0127 interviewed were the folks that have the titles supervisors;  
01 correct?  
02  
03 MR. WARD: Yes, sir.  
04 CHAIRMAN DUNN: Rough approximation, how many  
05 traders that don't have that title of supervisor?  
06 MR. WARD: I have had over the course of time I  
07 think approximately six or eight real-time marketers, and I have  
08 also had -- at any one time I have five forward marketers. Over  
09 the course of time there's been some movement through the  
10 organization. Some movement in and out of the organization.  
11 CHAIRMAN DUNN: I'm little confused in responding  
12 to the interrogatories regarding Ricochet.  
13 In LADWP's response signed by you, is the answer  
14 based upon we, LADWP, did not engage Ricochet transaction as  
15 described in the Enron memos; is that what you were saying in  
16 your response?  
17 MR. WARD: Yes, sir.  
18 CHAIRMAN DUNN: Did you ask any of the trading  
19 supervisors about the use of the term Ricochet?  
20 MR. WARD: No, sir. I asked them if DWP had  
21 participated in any strategy that would buy California power,  
22 export it, and then reintroduce that power for a higher price.  
23 CHAIRMAN DUNN: You saw the transcripts from  
24 NEG. I understand this was the first opportunity you saw them.  
25 We didn't get the confidentiality issue resolved until just  
26 before this committee started.  
27 It appears at first blush, since we just received  
28 the LADWP transcript, as Mr. Schreiber indicated, they seem to  
0128 be referring to different incidences. Do you agree?  
01 MR. WARD: Looking at this transcript that was  
02 just provided, it appears that they're talking about the same  
03 transaction that LADWP had identified.  
04 And if you are asking me if other incidences had  
05 occurred in a previous time period, then my answer would be yes.  
06 CHAIRMAN DUNN: Can you explain, if they're  
07 referring to the same incidents, as raised by Mr. Schreiber, why  
08 NEG's recordings have the NEG, LADWP parts of the conversation,  
09 but LADWP's recordings of the incidents do not have LA/NEG's  
10 portion of the discussions?  
11 MR. WARD: The transcripts that I provided, I  
12 believe the term NEG is what we had used as either PGT or PGET.  
13 CHAIRMAN DUNN: Correct. Is it your belief that  
14 what you provided to the committee, let's just say the PGET  
15 connection, is identical to what you saw on the screen?  
16 MR. WARD: I believe that they're the same  
17 transaction.  
18 CHAIRMAN DUNN: That's not my question. Is it  
19 the same conversations?  
20 MR. WARD: I believe that they're trying to

22 capture the same conversation, but we --  
 23 CHAIRMAN DUNN: I'm not understanding that,  
 24 Mr. Ward.  
 25 MR. WARD: I can see that there are significant  
 26 differences between the transcript that was just provided and  
 27 the transcript that we had provided you.  
 28 CHAIRMAN DUNN: Can you explain that?  
 0129  
 01 MR. WARD: No, sir. But we would invite anybody  
 02 on your committee or your staff to come down and review our  
 03 tapes.  
 04 CHAIRMAN DUNN: I understand that, and I  
 05 understand you also have the tape here today.  
 06 MR. WARD: Yes, sir.  
 07 CHAIRMAN DUNN: Will you produce that voluntarily  
 08 to the committee?  
 09 MR. WARD: Can I talk to my counsel?  
 10 CHAIRMAN DUNN: Please feel free.  
 11 MR. WARD: Did you want me to play it or turn it  
 12 over?  
 13 CHAIRMAN DUNN: I want you to turn it over to the  
 14 committee.  
 15 MR. WARD: Sir, this is my only copy at this  
 16 time. I would ask the committee that -- I am happy to provide  
 17 the tape if I can have the committee make a copy of that tape  
 18 and get it back to me.  
 19 CHAIRMAN DUNN: I have no problem doing that  
 20 whatsoever, Mr. Ward. We'll be happy to oblige that request.  
 21 MR. WARD: Then I have no problem.  
 22 CHAIRMAN DUNN: Okay.  
 23 But let me return, I understand you are offering  
 24 to allow us to hear the tapes.  
 25 But we both agree, there's a difference between  
 26 the transcript provided by NEG and the transcript provided by  
 27 LADWP; correct?  
 28 MR. WARD: That's correct.  
 0130  
 01 CHAIRMAN DUNN: As you sit here today, do you  
 02 understand, first blush, why there's a difference between those  
 03 two, which in my view is significant?  
 04 MR. WARD: I cannot explain what the differences  
 05 are between the two transcripts. I do have full faith in the  
 06 copy, the taped conversation that I have currently with me, that  
 07 the transcript is a true representation of that.  
 08 CHAIRMAN DUNN: Okay, and we will review that.  
 09 And don't worry, Mr. Ward, you're not going to be picked on.  
 10 We'll pose the same question to NEG as well, as we try to  
 11 resolve why we have a difference in transcripts that are  
 12 supposed to refer to the same incident.  
 13 MR. WARD: I did want to assure this committee  
 14 that this transcript was prepared by me and counsel; that while  
 15 I had some clerical people do the original transcript, we went  
 16 back and, with the tape, and tried to verify every word  
 17 personally on that transcript.  
 18 And also, there was a question as to the  
 19 narrative. The narrative from Dan Kurowski throughout this  
 20 particular tape was an attempt by Mr. Kurowski to let the  
 21 committee know exactly what time these occurred, and try to  
 22 summarize the tape in some way. So, where ever you see  
 23 Mr. Kurowski's name in this particular transcript, or listen to  
 24 him on tape, that was the purpose of that.  
 25 CHAIRMAN DUNN: So, Mr. Kurowski is not on the  
 26 tape itself?  
 27 MR. WARD: Mr. Kurowski's voice is on the tape as  
 28 a narrative. And Mr. Kurowski was the person that actually made

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01 the recording for me.  
 02 CHAIRMAN DUNN: So, what is listed here as  
 03 Mr. Kurowski in that transcript was actually on the tape at the  
 04 time that tape was originally made?  
 05 MR. WARD: No, sir.  
 06 CHAIRMAN DUNN: It was inserted afterwards?  
 07 MR. WARD: Yes, sir.  
 08 CHAIRMAN DUNN: Did the insert of Mr. Kurowski's  
 09 comments at some point in time after delete any of the original  
 10 recording?  
 11 MR. WARD: I don't believe so.  
 12 MR. SNYDER: Excuse me.  
 13 Can he explain to you how he did it.  
 14 CHAIRMAN DUNN: Absolutely.  
 15 MR. SNYDER: Explain how you have the Tape Center  
 16 and how you taped it so that it wouldn't affect the originals.  
 17 MR. WARD: We have -- our process for recording  
 18 tapes is that there's a digital -- a digital tape that is a  
 19 secure state -- a secure tape system. And off of that digital  
 20 tape, it goes through a piece of software provided by  
 21 Dictaphone.  
 22 And the way that we had made this particular tape  
 23 is having -- I sent Mr. Kurowski in. He listened to each  
 24 conversation. Held a tape recorder to the speaker of that  
 25 playback system. And that's how we ended up producing this  
 26 particular tape.  
 27 CHAIRMAN DUNN: When was it produced?  
 28 MR. WARD: That tape was produced, I believe,

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01 Sunday evening.  
 02 CHAIRMAN DUNN: The source from which that tape  
 03 recording was made from Sunday evening, is the source still  
 04 preserved?  
 05 MR. WARD: Yes, sir.  
 06 CHAIRMAN DUNN: And describe that source for me  
 07 again.  
 08 MR. WARD: We have a digital tape recorder that  
 09 records everything to a computer system. And I think it holds  
 10 approximately two weeks' worth of conversations on that tape.  
 11 Once the system starts to get full, it's  
 12 transferred to a digital tape. It's stored. We mark that tape  
 13 as far as the time period that is relevant, and then we store it  
 14 into an area in our Control Center.  
 15 CHAIRMAN DUNN: What's the retention period for  
 16 those?  
 17 MR. WARD: Well, currently we have retained all  
 18 the tapes since the system was installed.  
 19 CHAIRMAN DUNN: Which was when?  
 20 MR. WARD: Which was, I don't recall how long  
 21 we've had it. I believe we've had it approximately two years.  
 22 We believe we also have approximately another three years' worth  
 23 of tapes from our old system, which was a one-and-a-half inch  
 24 analog system.  
 25 CHAIRMAN DUNN: The original recording, however,  
 26 is still available?  
 27 MR. WARD: Yes, sir.  
 28 CHAIRMAN DUNN: Senator Bowen.

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01 SENATOR BOWEN: That's not what I just  
 02 understood.  
 03 The original recording would have been on a  
 04 physical tape, but that's only preserved for a couple of weeks,  
 05 at which point -- no?  
 06 MR. WARD: The original recording is inside of a

07 computer with limited memory. Then that is preserved on tape so  
08 that the computer system can start recording new -- new  
09 materials.

10 SENATOR BOWEN: I understood you to say that the  
11 repository was digital.

12 MR. WARD: It's a storage area for -- where we  
13 keep our digital tapes.

14 SENATOR BOWEN: Is it actually tape, or is it as  
15 a medium?

16 MR. WARD: As a medium it's tape, but it's a  
17 digital medium, which means that you can't put it into a tape  
18 player and just play it.

19 SENATOR BOWEN: Right, but what that means is  
20 that the original recording, which was made to a computer hard  
21 drive, presumably, or some similar medium, is not available.  
22 What's available is the transfer of that to the digital tape, if  
23 I'm understanding your system correctly.

24 MR. SNYDER: Excuse me, Senator.

25 It's my understanding that in fact one of  
26 Mr. Morrow's representatives has already been in L.A. to listen  
27 to what we have in L.A. on this digital tape. It's my  
28 understanding, correct me if I'm wrong, he can go down there,

0134 and sit and listen to it.

02 But what they did is to take make a copy. They  
03 stuck a tape recorder in front of it.

04 SENATOR BOWEN: Yes, I understand that.

05 But as I look at these two transcripts, it seems  
06 to me the most likely explanation for why they're so different,  
07 because they're not sort of different, they're like, they're  
08 completely different, is that you just have different time  
09 periods. And that the time period that's covered -- either  
10 there was no tape being made of the conversations between LADWP  
11 and NEG, although conversations with other parties were being  
12 made, or the time period during which the discussions we have  
13 from the NEG tapes is simply not represented.

14 Those are the two explanations that don't involve  
15 any kind of mischief with the documents.

16 CHAIRMAN DUNN: Mr. Drivon.

17 MR. DRIVON: One question I don't think has been  
18 asked is whether or not the transcript that you provided us is a  
19 transcript of all of the conversations related to this series of  
20 transactions, or only some of them? That you have.

21 MR. WARD: Well, I will certainly be willing to  
22 go back and review additional time periods, if either we want to  
23 identify them, or I can have staff just listen for whatever time  
24 period you want them to listen for.

25 However, the transcripts that we have, I think,  
26 were identified as starting at approximately 1913 hours, which  
27 is 7:13 P.M. Pacific -- Prevailing Pacific Time.

28 And looking at the transcripts that you're going  
0135 off of, I am -- I am almost certain that the time stamps are in  
02 a different time period. So, I'm not sure which --

03 MR. DRIVON: Yours is at 7:00 o'clock in the  
04 evening on the 11th?

05 MR. WARD: On the 11th.

06 MR. DRIVON: These transcripts are of  
07 conversations that took place some of them between -- some of  
08 them involving your Mr. Solis and NEG -- those were on the  
09 morning of the 12th.

10 MR. WARD: Yes, sir, but if it's Eastern Time,  
11 that would be approximately 9:22 or 9:00 o'clock Pacific Time.

12 MR. DRIVON: I understand.

13 So, I don't know whether we have -- whether what

14 you provided is all of -- because you should have captured the  
15 same conversations that they captured if you were involved in  
16 the conversation; right?

17 MR. WARD: Looking at the transcripts, there are  
18 portions that are similar, and there are portions that are not  
19 similar.

20 CHAIRMAN DUNN: That's exactly why we're so  
21 curious.

22 MR. WARD: I am curious also.

23 CHAIRMAN DUNN: I understand. I wasn't trying to  
24 imply anything. Something is amiss, however, and that's what  
25 we're trying to sort out, obviously.

26 MR. WARD: And I'd be more than happy to  
27 cooperate in any way I can as far as supplying you additional  
28 tape time or additional transcripts.

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01 MR. DRIVON: And the ISO would also have  
02 recordings of whatever they were involved in, and so would  
03 Constellation.

04 MR. WARD: Yes, sir.

05 MR. DRIVON: I understand those searches have  
06 already been started by both parties.

07 CHAIRMAN DUNN: Senator Bowen, further follow up?

08 SENATOR BOWEN: I guess I only have one little  
09 bit of the LADWP transcript, so I don't have the parts that are  
10 the same or similar.

11 But it does seem like the discrepancy's not going  
12 to be resolved, the reason for the discrepancy will not be  
13 resolved while we're here today. So, I think we know what needs  
14 to happen.

15 CHAIRMAN DUNN: Agreed, Senator Bowen.

16 Let me just ask a few follow-up questions. I  
17 believe, Senator Morrow, you have some questions as well.

18 Has ISO at any time with anyone at LADWP raised a  
19 question, concern, comment, regarding potential Ricochet  
20 transactions?

21 MR. WARD: I believe I had conversations with the  
22 ISO back in January of 2000 regarding Ricochet types of  
23 transactions.

24 It's our position that we have every contractual  
25 right to schedule at Malin, either northbound or southbound.

26 The ISO had conveyed to me at that time that it  
27 presented them problems as far as keeping track of the  
28 transactions, that the -- that their protocols didn't allow for

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01 those types of transactions. And at that time, I had given, I  
02 think, Spence Gerber my assurances that we would avoid trying to  
03 do those types of transactions in the future.

04 And if you refer to my version of the transcript,  
05 our energy trader had no idea what a Ricochet was. He -- he  
06 actually sat there at the end of the transcript and said, well,  
07 if this is causing problems, then we are going to terminate  
08 this.

09 And I believe -- so, I've had those conversations  
10 with the ISO as far as what our rights are.

11 CHAIRMAN DUNN: This is January 2000?

12 MR. WARD: Yes, sir.

13 And this particular type of transaction is not  
14 unique. This particular type of transaction is allowed. There  
15 are protocols for allowing this type of transaction at different  
16 hubs.

17 CHAIRMAN DUNN: When you say this type of  
18 transaction, you're referring to -- because I understand you  
19 maintain the position that the literal interpretation, or  
20 literal reading of the Enron Memorandums, that LADWP did not

21 engage in such Ricochet transactions. I know that's your  
22 position.  
23 When you say "these transactions," you're  
24 referring to the type that Mr. Drivon laid out in his well drawn  
25 schematic early on in his presentation?  
26 MR. WARD: Yes, sir. If you do trading at a  
27 particular hub, if you do what they call nodal trading at a hub,  
28 nodal trading allows you to make transactions at a particular  
0138  
01 hub. It doesn't care which direction a particular transaction  
02 is going. It allows you to make those trades, and then have  
03 those trades leave the hub in any particular direction, as long  
04 as you have transmission rights to that hub.  
05 CHAIRMAN DUNN: If you accept the transcript that  
06 was provided to us by NEG, it was clear in November of 2000 that  
07 they did not at that time agree with your position.  
08 MR. WARD: Not at Malin, sir. They do agree with  
09 my position at Palo Verde. They do agree with my position at  
10 Market Place, and they do agree with my position at Meade  
11 Substation.  
12 CHAIRMAN DUNN: But clearly -- I don't know if  
13 that's true or not. We'll accept your representations today,  
14 but via the transcript from NEG, they don't agree with it at  
15 Malin.  
16 MR. WARD: LA and the ISO do not agree as to what  
17 our rights are at Malin.  
18 CHAIRMAN DUNN: How was the Ricochet issue raised  
19 with you in January of 2000? Did the ISO call? Write a letter?  
20 MR. WARD: At that time, we had done some trades  
21 with the California Power Exchange, trying to supply them at  
22 Malin.  
23 I think we also -- I think there might have been  
24 another counterparty that we might have also tried that with.  
25 The ISO had raised some concerns that they were  
26 having problems tracking the trades, that they were also having  
27 problems as far as accounting for how our rights were being  
28 accounted for at Malin. They said that it was a problem. They  
0139  
01 couldn't -- they didn't have the resources or systems to keep  
02 track of those types of trades.  
03 And while I disagreed that whether we had the  
04 right to make those trades at Malin, I acquiesced to their  
05 desire that we not participate in those types of trades at  
06 Malin.  
07 CHAIRMAN DUNN: But in fact, if we accept the NEG  
08 transcript, in November you did engage in those trades?  
09 MR. WARD: I think that the NEG transcript --  
10 it's my understanding that PG&E Energy Trading had asked DWP to  
11 get energy from Palo Verde, which is a hub in Arizona, if we had  
12 unused transmission rights across our transmission system, which  
13 we apparently had 50 megawatts of room, and to transfer that 50  
14 megawatts up to Malin. That's what we did.  
15 CHAIRMAN DUNN: Mr. Drivon.  
16 MR. DRIVON: I have a couple of questions.  
17 CHAIRMAN DUNN: Senator Morrow, did you want to  
18 go first?  
19 SENATOR MORROW: Sure.  
20 First of all, with the Chair's and the  
21 committee's indulgence, I don't want to go unsaid, at least from  
22 me, I'm hearing today, what I've heard today is that LADWP at  
23 least to date, has been fully cooperative in producing documents  
24 and evidence that this committee has requested.  
25 I am greatly distressed. I'm very disturbed to  
26 hear about what transpired today. Essentially, as I'm informed,  
27 Mr. Chavez, a consultant with the staff, was provided that, hey,

28 you'll be willing to meet at a restaurant. You can listen -- we  
0140  
01 could listen to this tape, which granted, we've already agreed  
02 to. We can listen to tapes before, we've established that. But  
03 we can listen to this tape, so long as, and as I also am  
04 informed, you had requested that we actually request in writing  
05 or to state in writing that we would play that type in the  
06 middle of this hearing.  
07 That just greatly bothers me. From the very  
08 beginning, Mr. Chairman, and I've been involved directly with  
09 the discovery efforts in this case, as well as other municipal  
10 utility districts, at least comparing to other municipal utility  
11 districts, you know, I'm greatly dissatisfied with DWP's  
12 production of documents thus far.  
13 From the very beginning, we requested, a  
14 voluntary request for documents back in June, over an year, June  
15 of 2001. And as a result of that, I believe maybe four or five  
16 at the most boxes of documents were produced, some electronic  
17 data, which put it in perspective.  
18 This same request went out to Sacramento  
19 Municipal Utility District as well as everybody else. They  
20 provided something like 132 boxes, and by far way, way, way more  
21 in CDs, electronic information, than DWP ever provided.  
22 We followed up with a subpoena, as was noted, in  
23 September of 2001, not just to DWP, but to every other municipal  
24 district. And we were told in response to that, that you had  
25 already complied completely with the 72 requested items in that  
26 subpoena by your previous voluntary disclosure.  
27 And then, as it turned out, no, we keep getting  
28 -- we got a few more boxes. I think we're up to about 30 some  
0141  
01 boxes. They keep dribbling in. The latest, I'm informed, is  
02 that we should have it all by the end of this month, in July.  
03 I mean, it's been over a year in this effort.  
04 We've had a hearing. You referred to a hearing  
05 on March 4th, a compliance hearing, where we requested the  
06 persons most knowledgeable from DWP to come in and to talk about  
07 whether or not you'd fully complied with our requests. And as  
08 you'll recall from that hearing, myself and members of the  
09 committee were not greatly satisfied with the efforts.  
10 As far as the person most knowledgeable that was  
11 presented that day, frankly a janitor at DWP would have been  
12 more knowledgeable than the witnesses that were produced that  
13 day.  
14 So, you know, I'm greatly disturbed. And I  
15 certainly don't agree with DWP's notion that you've been fully  
16 compliant, fully cooperative, in the committee's efforts thus  
17 far.  
18 The way I see it, I'm going to be very blunt with  
19 you on that, is that DWP has not taken this investigation  
20 seriously, not from the beginning, and not even now, and it  
21 greatly disturbs me.  
22 With that, I have some questions.  
23 You indicated that DWP has played by the rules.  
24 How do you account in the transcript? It seems, even using your  
25 definition of Ricochet, let's even call it a bounce-back,  
26 applying a bounce-back, it would at least appear from these  
27 transcripts that we've been provided by NEG that that would be  
28 in violation to ISO protocols, rules.  
0142  
01 Would you agree or disagree with that, first of  
02 all?  
03 MR. WARD: They are outside of the ISO's  
04 protocols and rules as far as that particular point. However,  
05 as I pointed --

06 SENATOR MORROW: Was it playing by the rules?  
07 MR. WARD: I think that as I said before, we had  
08 -- I had a discussion with the ISO in January every 2000. My  
09 understanding of -- of what occurred in November, this  
10 apparently occurred.  
11 SENATOR MORROW: It's November of 2000.  
12 MR. WARD: November of 2000. That at least my  
13 understanding is that the trader was unaware of what was going  
14 on as far as this bounce-back or Ricochet issue. And that we  
15 had given that information to the ISO, that there was a certain  
16 amount of energy that we were scheduling up at Malin.  
17 The ISO had come back and said that the -- that  
18 he didn't see 50 of it leaving California. So, and at that  
19 point, they had terminated that transaction.  
20 SENATOR MORROW: Wait a minute. Mr. Ward, let me  
21 go to Page 104 of the NEG transcript. Let me just read a  
22 portion of that. Midway down, LA, and this is in response to  
23 the issue of NEG saying, hey, we're going to the buy-back  
24 situation. LA says,  
25 "And that's why I said --  
26 That's why it was very  
27 important for me, when I was  
28 telling you that, don't say  
0143 you're buying back only  
01 because -- the reason ... "  
02 "(Steve) Right."  
03 Steve being from NEG.  
04 "(LA) The reason, the reason  
05 that those guys look at those  
06 things kinda different."  
07 I mean, what we're talking about here, you  
08 acknowledge, is that those guys have protocols, and that would  
09 be out of the protocols; right?  
10 Is that not a fair, reasonable interpretation of  
11 what your trader was saying?  
12 MR. WARD: Senator, as I said before, I don't  
13 know why this particular transcript is different than ours.  
14 SENATOR MORROW: Let's assume for a moment that  
15 the transcript that we're looking at is accurate.  
16 MR. WARD: If the transcript were accurate, the  
17 rules that the ISO employs, their rules also say that they are  
18 to comply with the existing rights of transmission owners. And  
19 I believe that we do have a right at Malin to schedule in a  
20 northbound fashion or a southbound fashion, or in this Ricochet  
21 fashion.  
22 The ISO protocol does not comply with that right.  
23 And what I gave to the ISO back in January of 2000 was my  
24 assurance that we would curtail that type of transaction.  
25 SENATOR MORROW: But that leads me to another  
26 question.  
27 How many types of these -- let's characterize  
0144 them, as I think you do in your letter, bounce-back  
01 transactions.  
02 MR. WARD: Yes.  
03 SENATOR MORROW: How many of those transactions  
04 occurred, let's say, prior to January of 2001?  
05 MR. WARD: I'm only aware of a handful. I think  
06 something on the order of six, or seven, or eight.  
07 SENATOR MORROW: Six or seven or eight. That's  
08 all?  
09 MR. WARD: As far as I'm aware.  
10 SENATOR MORROW: Could it be more?  
11 MR. WARD: I haven't checked it. Without having

13 data from the ISO, it would be difficult for me to check on  
14 that.

15 SENATOR MORROW: If you read this, there seems to  
16 be an indication in these transcripts that the ISO has caught  
17 this a number of times, that it's happened in the past.

18 MR. WARD: Yes, sir. They also said that it was  
19 once in a blue moon.

20 SENATOR MORROW: Possibly.  
21 If it is as you say, that you think you had a  
22 right to do this at Malin, why was your trader so adamant, if  
23 you can fathom, on the issue about using the terminology?

24 Now I'd like to go to Page 100, the last two  
25 paragraphs there. This will be trader Steve from NEG,  
26 "Well, actually it's, it's not  
27 ... yes ... we're ... we're ...  
28 I'm buying it back from you, I  
0145  
01 guess is the best way to ..."  
02 "(LA) Well, I don't know.  
03 don't say 'back' -- Don't say  
04 'back' -- because back is a bad  
05 thing. Just say, 'Listen --  
06 I'm buying this from you, IID's  
07 generating it, I'm buying it  
08 from you at Palo Verde." Is  
09 that correct?"

10 I mean, if DWP's within its own rights, then why  
11 is your trader going so far out of his way, making an issue of  
12 using the word "back"?

13 MR. WARD: I'm at a loss, Senator.

14 SENATOR MORROW: So am I. Well, maybe not. Let  
15 me ask you this question.  
16 Somewhere here your trader also rationalizes that  
17 the energy that ultimately went up north to Malin and was sold  
18 to NEG, the 50 megawatts, that it was generated. This was DWP  
19 generated electricity. I seem to have read that in the context  
20 of this transcript.

21 First of all, would that be true or not?

22 MR. WARD: If they supplied energy at our border,  
23 then we would not have moved our generation at all, other than  
24 to supply losses.

25 SENATOR MORROW: So, when the trader said to  
26 Steve from NEG that, hey, this is really LADWP generated power,  
27 that wasn't true?

28 MR. WARD: Um, if he said that, then that wasn't  
0146  
01 true.  
02 SENATOR MORROW: It was like a wink, wink.  
03 As you said in your letter, DWP purchased the  
04 power. This is your letter of June 25th that you signed. DWP  
05 purchased the power, transported it to Malin, and resold the  
06 power to PG&E Trading at Malin.  
07 Let's cut to the chase. I understand that the  
08 definition of Ricochet as it is appears in Enron documents seems  
09 to contemplate a megawatt laundering scheme where the megawatts  
10 flow out of the state in another control area. Whatever happens  
11 up there, it eventually ends up back in California, out of  
12 market, and is sold, not subject to the \$250 cap.  
13 It appears that didn't happen at least in this  
14 instance, this specific instance in November. I'll give you  
15 that.  
16 Let's get down to it. The reality was that LADWP  
17 purchased the power, I think, for \$70, I think, right, \$70 at  
18 Palo Verde; correct?

19 MR. WARD: Yes, sir.

20 SENATOR MORROW: Wheeled it up to Malin, and  
 21 there sold it for \$95.  
 22 MR. WARD: Yes, sir.  
 23 SENATOR MORROW: And it was transported. So.  
 24 MR. WARD: Yes, sir.  
 25 SENATOR MORROW: So, basically your cut out of  
 26 the deal was 25 bucks for all this, per megawatt; right?  
 27 MR. WARD: Gross.  
 28 SENATOR MORROW: Now you, collectively DWP, knew  
 0147  
 01 that that power was going to go somewhere, but ultimately come  
 02 back to the sink, at least the 50 megawatts, come back to a sink  
 03 in the ISO; right?  
 04 MR. WARD: Yes, sir. Actually, we didn't know  
 05 where it was going. I think we were just delivering it to  
 06 Malin. I'm not sure that my trader understood where it was  
 07 going.  
 08 SENATOR MORROW: Okay. We're on page 100, about  
 09 one-third down, it says, "(LA)" this is the LA guy, your guy,  
 10 talking, Mr. Solis, I think.  
 11 "Hey -- I talked to the ISO, ok?  
 12 Let me just tell you. The  
 13 ISO's talking about some  
 14 Constellation schedule -- I  
 15 don't know anything about  
 16 Constellation. Is this  
 17 schedule, does it involve  
 18 Constellation?"  
 19 "(Steve)"  
 20 From NEG,  
 21 "Um, well we're [sic] sending it  
 22 in to the ISO."  
 23 MR. DRIVON: You misread that, Senator. It says  
 24 "they are sending it."  
 25 SENATOR MORROW: Well, I mispronounced it.  
 26 "... they're sending it in to  
 27 the ISO."  
 28 "(LA) Who is sending it in to  
 0148  
 01 the ISO?"  
 02 "(Steve) The Constellation."  
 03 If LADWP didn't know previous to that, they  
 04 certainly knew it right then; didn't they?  
 05 MR. WARD: Yes, sir.  
 06 SENATOR MORROW: The next page, Page 101, right  
 07 in the middle here,  
 08 "(LA) Ok,"  
 09 again talking to Steve,  
 10 "... that's all -- tell that to  
 11 the ISO. I'm selling you 50  
 12 megawatts at COB."  
 13 California-Oregon Border.  
 14 "What you do with them at COB,  
 15 I don't know, you know ... Now  
 16 if you're buying them at COB  
 17 and you're shipping them down  
 18 South, then that could be a  
 19 problem. Ok? But if, you  
 20 know, I don't know what you're  
 21 doing with them at COB."  
 22 Twice your trader is saying "I don't know." One  
 23 page back, he was told exactly where that power was going, from  
 24 Constellation to the ISO.  
 25 Your trader's not exactly being truthful here; is  
 26 he?

27 MR. WARD: If this is a true representation.  
 28 SENATOR MORROW: Let's assume for a moment it is.  
 0149  
 01 If this is a true representation, an accurate transcript, this  
 02 wouldn't be a true statement; right?  
 03 MR. WARD: I'd agree with that.  
 04 SENATOR MORROW: It'd be kind of like, wink,  
 05 wink, "I don't know," when really they know; right?  
 06 MR. WARD: I think I could agree with that.  
 07 SENATOR MORROW: And if that were the case, that  
 08 certainly wouldn't be consistent with the rules and protocols of  
 09 ISO; would it?  
 10 MR. WARD: Um, it's not consistent with the  
 11 practices of ISO. I don't believe they have any protocol for  
 12 that particular tie point.  
 13 SENATOR MORROW: Oh, I see. So the practice is,  
 14 everybody should tell the truth, but there's no rules against  
 15 lying? Is that what you're saying?  
 16 MR. WARD: As I stated before, the ISO and LA do  
 17 not agree as to what our rights are at Malin.  
 18 SENATOR MORROW: Well, you said in your  
 19 statement, I think you also said in your testimony, basically  
 20 that DWP engaged in this particular transaction, to read from  
 21 your letter on the second page, you said,  
 22 "In this case the power did not  
 23 leave California, and DWP was  
 24 selling the power at far below  
 25 market prices so that it could be  
 26 provided to California customers."  
 27 I mean, obviously the spin of that is that DWP is  
 28 trying to do the best for the citizens of California, and to  
 0150  
 01 provide energy at a low cost, when the reality is that even if  
 02 it didn't cross the border, it was coming back, and the fair  
 03 market price at that time at the ISO was \$250 per megawatt;  
 04 wasn't it?  
 05 MR. WARD: I believe that's true.  
 06 SENATOR MORROW: So, if Constellation was going  
 07 to sell it at \$250 per megawatt, that was going to happen,  
 08 you're selling it to NEG for a \$20 cut is not going to really  
 09 affect the consumer one way or the other, is it?  
 10 MR. WARD: Well, sir, if DWP had not provided  
 11 that transportation mechanism, the 50 megawatts of generation  
 12 would have had to have been produced some place else. And it  
 13 probably would have had to have been produced in either the  
 14 Pacific Northwest or somewhere in Northern California.  
 15 SENATOR MORROW: But everybody seems to know, the  
 16 sink was going to be the ISO, where the market was \$250; right?  
 17 MR. WARD: Yes, sir.  
 18 SENATOR MORROW: I've got an item, and I  
 19 apologize. I don't think it's in your file folder. You may be  
 20 familiar with it.  
 21 Mr. Chavez, could you make a copy of it and  
 22 provide them with it.  
 23 I think for the benefit of the members, I  
 24 apologize, if we have any other copies, you can give it to  
 25 Ms. Bowen and Senator Dunn as well.  
 26 CHAIRMAN DUNN: We can share over here, if  
 27 somebody needs another one.  
 28 SENATOR MORROW: Go ahead and take a moment,  
 0151  
 01 Mr. Ward, to review it.  
 02 It appears to be, for the benefit of folks out  
 03 there, an e-mail from a Randolph Krager to a number of people,  
 04 dated June 26, 2001.

06-27-02.TXT

05 Have you had an opportunity to review that?  
06 MR. WARD: Yes, sir.  
07 SENATOR MORROW: This appears, again, to be an  
08 e-mail from a Randolph Krager, dated 10:02 a.m., June 26, 2001.  
09 First of all, and it appears to be an e-mail to a  
10 number of people at LADWP, including yourself; is that correct,  
11 Mr. Ward?  
12 MR. WARD: Yes, sir.  
13 SENATOR MORROW: Do you recall receiving this  
14 e-mail yourself or seeing it before?  
15 MR. WARD: I recall some of the issues. I don't  
16 recall this particular e-mail.  
17 SENATOR MORROW: Who's Randolph Krager?  
18 MR. WARD: He's a trading supervisor who works  
19 for me.  
20 SENATOR MORROW: Let me just read basically the  
21 first paragraph or the first portion of it,  
22 "Wholesale (both day-ahead and  
23 real-time) may sell surplus  
24 megawatts to CERS if they do  
25 not state that they are ..."  
26 And I apologize. I know this is kind of switching gears from  
27 what we had been talking about. But since you're here, this has  
28 been on my mind. I want to ask you about it.  
0152  
01 "Wholesale ... may sell surplus  
02 megawatts to CERS if they do  
03 not state that they are  
04 procuring to support the CAISO.  
05 If CERS states that they are  
06 procuring for the CAISO, then  
07 we are not able to sell the  
08 power to them, because  
09 otherwise this would require us  
10 to be in compliance with the  
11 April 26, 2001 FERC Ruling."  
12 If you can, Mr. Ward, what is meant by that?  
13 What was the substance of that communication to you?  
14 MR. WARD: I believe at the time I was given  
15 counsel by our City Attorney's Office that due to a FERC ruling  
16 in that particular time period, that if Los Angeles were to  
17 participate directly with the ISO, or support the ISO's  
18 transmission system directly, that the local jurisdiction of Los  
19 Angeles over its own transmission system may be put in jeopardy.  
20 SENATOR MORROW: Well, the FERC order that's  
21 referred to, the April 26, 2001 ruling, that in effect says  
22 that, so far as all in-state generators, they have to sell their  
23 excess energy into the Cal ISO markets; right?  
24 MR. WARD: I don't know, sir.  
25 SENATOR MORROW: You don't know, or am I wrong?  
26 MR. WARD: I'm not that familiar with each and  
27 every FERC ruling as far as the particular dates.  
28 SENATOR MORROW: When I read this, it seems to  
0153  
01 indicate to me that otherwise it requires them to be in  
02 compliance, like you wanted to be in noncompliance. Am I  
03 reading this right?  
04 MS. KAMINE: Excuse me, sir.  
05 My name is Marcia Haber Kamine, and I'm an  
06 Assistant City Attorney with Mr. Snyder, and I assist as FERC  
07 counsel.  
08 That particular ruling provided that if we  
09 participated in the ISO market in any fashion, that we would  
10 then become FERC jurisdictional with respect to the Federal  
11 Power Act.

Our concern and our defense in Metro, the FERC litigation, has been that we are nonjurisdictional, and therefore not subject to the refund mandates that that particular order relates to, which is, I believe FERC Docket Number EL 95-045.

MR. SNYDER: One other thing. There was reference to a notebook. Could we have a copy of the notebook?

CHAIRMAN DUNN: All it is, is simply the exhibits that have been up here. Certainly we can get you a copy of those.

MR. SNYDER: I'm sorry. I thought they had a copy of it.

CHAIRMAN DUNN: Those are for committee members only, but we can certainly provide you with a copy. It's not a problem at all.

MR. SNYDER: That's enough for now. Thank you very much.

CHAIRMAN DUNN: Senator Bowen.

SENATOR BOWEN: Let me just follow that thread for a moment or two, to make sure I understand.

I think the general position of LADWP is that it is not subject to FERC jurisdiction; is that correct?

MS. KAMINE: That is correct.

SENATOR BOWEN: Is that why there is a dispute about what a right to schedule at Malin means?

MS. KAMINE: No. That has to do with contractual rights.

SENATOR BOWEN: Okay, so this FERC order, the April order, which was the long-sought order, California's long-sought mitigation measure, provides that under certain circumstances, municipal utilities will be subject to FERC jurisdiction if they engage in certain activities.

Is that your reading of the order, the footnote?

MS. KAMINE: Yes.

SENATOR BOWEN: That would mean that the goal of this is to steer LADWP away from engaging in any activity that would bring it under FERC jurisdiction, understanding that there is a dispute over whether munis are ever subject to FERC jurisdiction.

MS. KAMINE: That is correct. And you have to understand in the context of that at that particular juncture, the State of California was seeking approximately, I believe it was \$235 million from the City of Los Angeles as a refund. And the issue of FERC jurisdiction, because it is pending litigation at this time, is a very difficult issue for me to discuss in

light of the fact that I am concerned about our defense in that case, which is still pending before FERC.

SENATOR BOWEN: That was my understanding of why there is this ISO support mechanism here.

There is the issue of reselling to other marketers, utilities, and not just booking it out with PacifiCorp raises other issues that I will not go into right now, but I know the state itself had similar issues, jurisdictional issues, when it came to the bankruptcy proceedings that PG&E has concerns over, subjecting ourselves to the jurisdiction of a particular entity.

So, at least I understand it.

Just one other point, and it has to do with this definition of Ricochet. From the standpoint of an electricity buyer in PG&E, Edison, or Sempra territory, why would they care whether it was a Ricochet, whether a transaction was a Ricochet as defined by Enron or as defined by you? Isn't the end result the same?

19 MR. WARD: No, Senator, it's not.  
 20 The Ricochet in this particular presentation was  
 21 not taken out of California. It was still subject to whatever  
 22 market forces were inside of the state. It did not take it  
 23 outside of the state, to come back in at something that was  
 24 higher than the ISO's cap.  
 25 SENATOR BOWEN: So, is the difference is, a  
 26 Ricochet that goes out of the state could come back in at \$500 a  
 27 megawatt hour in November of 2000, because we still had the cap.  
 28 This was before the previous ISO went to FERC to remove the cap.  
 0156 So, Ricochet out of California could come back in  
 01 at more than 250, but a Ricochet in California could come back  
 02 at a max of 250?  
 03 MR. WARD: That is one difference. But again --  
 04 SENATOR BOWEN: I'm just looking at the price  
 05 difference, you know. And it just looks to me like if the  
 06 market's at 30, or 70, or whatever the original purchase from  
 07 IID was, and the customers ended up paying 250. So, I guess  
 08 they should be grateful that they didn't pay a thousand.  
 09 CHAIRMAN DUNN: Mr. Schreiber.  
 10 MR. SCHREIBER: Thank you, Mr. Chair.  
 11 I think it's important, per Senator Bowen's  
 12 reference to what a Ricochet is, to look at the definition of  
 13 Ricochet provided by Enron. And you can see that it's a quite  
 14 broad definition. It's at the top there, the first two  
 15 paragraphs on the page.  
 16 The first paragraph states --  
 17 CHAIRMAN DUNN: Let me interrupt you,  
 18 Mr. Schreiber.  
 19 So everybody understands, this is from the Enron  
 20 Memos, the infamous Death Star, Fat Boy Memos.  
 21 MR. SCHREIBER: Right. This is from the Stoel  
 22 Rives, December 6th, 2000 memo.  
 23 The first paragraph there is quite specific in  
 24 what a Ricochet actually consists of. And I believe that many  
 25 of the market participants have interpreted this, including  
 26 Williams earlier today, to mean that they needed to be engaged  
 27 in every step of the transaction.  
 0157 The first paragraph, as you can see, says that  
 01 Enron in this case buys energy in the PX day of market. They  
 02 schedule it for export. They sell it to somebody in a holding  
 03 pattern, so to speak, and then it's brought back into the state  
 04 during the ISO real-time market.  
 05 The second paragraph, though, is quite different  
 06 in its tenor. It's descriptive and quite broad in the affect  
 07 that a Ricochet transaction has:  
 08 "The effect of the strategy on  
 09 market prices and supply is  
 10 complex ... it is clear that  
 11 Enron's intent under this  
 12 strategy is solely to arbitrage  
 13 the spread between the PX and  
 14 the ISO, and not to serve  
 15 load or meet contractual  
 16 obligations. Second, Ricochet  
 17 may increase the Market  
 18 Clearing Price by increasing  
 19 the demand for energy,  
 20 increasing the MCP,"  
 21 blah, blah, blah.  
 22 "Third, Ricochet appears to  
 23 have a neutral effect on  
 24 supply ..."  
 25

26 And,  
 27 "Fourth, the parties that pay  
 28 Enron for supplying the energy  
 0158  
 01 ... are the parties that  
 02 underscheduled or underestimated  
 03 their load."  
 04 I think if you look at the second paragraph, it  
 05 does offer quite a more broad -- a broader picture about what a  
 06 Ricochet could entail. I don't think a Ricochet by definition,  
 07 has to -- by Enron's own definition -- has to be parked outside  
 08 of the state and then brought back in.  
 09 CHAIRMAN DUNN: And Senator Bowen, I think, did a  
 10 good job of driving that point home, in that while Ricochet may  
 11 be done to go outside of the state, come back in to circumvent  
 12 price caps, it can be done in-state, so to speak, for the sole  
 13 purpose of driving the price up without making it end around the  
 14 price cap, if I understood your point correctly, Senator Bowen.  
 15 SENATOR BOWEN: You did.  
 16 CHAIRMAN DUNN: Good.  
 17 Mr. Ward, if I can come back to you for one  
 18 second. I realize that the original e-mail that started all of  
 19 this from PGE/NEG, the David Pierce memo of Sunday, November  
 20 12th, was not written by you or anyone at LADWP.  
 21 But I'll tell you from my perspective, one of the  
 22 initial areas of high concern was, if this was anything other  
 23 than a Ricochet for the purpose of driving the price up, why  
 24 would PGE/NEG be so concerned about it as expressed in the  
 25 e-mail?  
 26 Maybe you have some thoughts on that, maybe you  
 27 don't. I understand, you didn't write it; you didn't receive  
 28 it. But if you have thoughts, we'd appreciate them.  
 0159  
 01 MR. WARD: If I were try to reason some of this  
 02 through, I think that the deal that PGET tried to put together,  
 03 and that ultimately ended up costing PG&E some money to get out  
 04 of it, because of the -- because the ISO ultimately did not  
 05 allow them to schedule something that they had already  
 06 scheduled.  
 07 The PGET transaction, from my understanding  
 08 originally, they purchased energy at \$70 out at Palo Verde, and  
 09 tried to get that energy, utilizing DWP transmission, up to  
 10 Malin and then back into the ISO.  
 11 I think ultimately, when the deal fell apart,  
 12 PGET ended up selling that energy back to Los Angeles at Palo  
 13 Verde for \$55, for a loss of \$15 a megawatt hour.  
 14 CHAIRMAN DUNN: Okay. That speculation on your  
 15 part, I understand that's what it is, would not be consistent if  
 16 we assume that the NEG transcripts are accurate; correct?  
 17 MR. WARD: I don't recall how they ultimately  
 18 ended up.  
 19 CHAIRMAN DUNN: What I'm saying there is, your  
 20 theory that PGET ultimately lost dollars.  
 21 MR. WARD: I believe it would be consistent with  
 22 their transcript in that there was one hour that they got to do  
 23 their Ricochet-type schedule and back into California --  
 24 CHAIRMAN DUNN: Right, but not the other.  
 25 MR. WARD: -- but the second hour fell part. It  
 26 ultimately ended up costing them some money.  
 27 CHAIRMAN DUNN: Referring to whom?  
 28 MR. WARD: PGET.  
 0160  
 01 CHAIRMAN DUNN: I understand that, but the  
 02 transcript as to LADWP's trader seems to imply a different  
 03 motivation, if we accept the PGET transcript; correct?

04 MR. WARD: I'm not sure.  
05 CHAIRMAN DUNN: Okay. I'll just leave it as is  
06 at that point.  
07 Any other questions from the committee on this  
08 particular issue? We'll go Senator Bowen, the Senator Morrow.  
09 SENATOR BOWEN: I just have one question. This  
10 is not about this. It's just because I can't remember.  
11 Did LADWP have a representative on the ISO  
12 governing board at this time period?  
13 MR. WARD: I believe we did, Senator.  
14 SENATOR BOWEN: So, during is the discussion of  
15 the price caps, you had a representative on the governing board.  
16 MR. WARD: I believe we did.  
17 SENATOR BOWEN: That was August.  
18 MR. WARD: And I believe that the -- LA had voted  
19 for price caps at that time.  
20 CHAIRMAN DUNN: Yes, I think that's correct.  
21 MR. WARD: If I could make one more statement.  
22 It is my opinion that LA's transmission was  
23 utilized to get additional energy into Northern California.  
24 Now, when you have a limited amount of  
25 transmission and a price cap that's in place, the 50 megawatts  
26 of transmission that we ultimately ended up using apparently  
27 made no difference in the prices that were being charged in the  
28 -- in Northern California.

0161 But Los Angeles also has a fair amount of costs,  
01 and I don't believe the \$25 was out of line. And if you wish me  
02 to detail that out, I'd be more than happy to do that.  
03 CHAIRMAN DUNN: Senator Morrow, did you have any  
04 follow-up questions.  
05 SENATOR MORROW: Just a couple. And I apologize.  
06 Actually, I wrote these down when Mr. Drivon was testifying. I  
07 want to come back to them for a moment, and I may have to ask  
08 questions of these folks.  
09 Mr. Drivon, I think you said that you had  
10 consulted or contacted the ISO with regard to Ricochets, or did  
11 I catch you right?  
12 MR. DRIVON: No, I don't think I've discussed it  
13 with the ISO. We have discussed the issue with several  
14 consultants.  
15 CHAIRMAN DUNN: If I can interrupt, Mr. Drivon.  
16 Perhaps, Senator Morrow, what you're referring to  
17 is when I asked Mr. Ward about whether LADWP had ever received  
18 contact from ISO re: Ricochet.  
19 And I believe, Mr. Ward, you said in January of  
20 2000.  
21 MR. WARD: Yes, sir.  
22 MR. DRIVON: And there are other -- there are  
23 other places in the transcript that I was referring to that  
24 refer to contacts and conversations between the ISO and LA on  
25 the Ricochet issue.  
26 SENATOR MORROW: Okay. Here's what I'm driving  
27 at.  
0162 If you can answer, Mr. Drivon, from your  
01 knowledge and from what you've learned from other consultants,  
02 the ISO definition of Ricochet, is it consistent with the Enron  
03 definition that we've seen up there, if you know?  
04 MR. DRIVON: You know, I believe it is consistent  
05 with what -- let me put it this way. I don't believe it's  
06 inconsistent with what the writing is, the written explanation  
07 by Enron of Ricochet. Because the written explanation by Enron  
08 of Ricochet does not talk about price caps. It talks about an  
09 arbitrage situation. And it doesn't necessarily have to be

11 parked out of state, I don't believe.  
 12 So, the two definitions of Ricochet, if there are  
 13 only two, I don't believe are inconsistent. We can read it  
 14 again and look at it, and that's all I can do.  
 15 SENATOR MORROW: Good enough. I know where  
 16 you're going there.  
 17 Second question, again, Mr. Drivon, I think you  
 18 said that you had spoken with a number of market participants,  
 19 or people in the industry at least, and ventured an opinion that  
 20 the type of transaction that's generally described in these  
 21 transcripts that we're referring to today was speculative in  
 22 nature. Did I get that right?  
 23 MR. DRIVON: Well, yeah. I mean, that's true.  
 24 And the question, I think, one of the questions  
 25 that I was going to ask in a moment was, and it will define  
 26 that, I think.  
 27 The question was going to be, did LADWP purchase  
 28 these 50 megawatts at Palo Verde with the intent of reselling  
 0163 those megawatts at Malin?  
 02 Because I believe that purchasing energy for the  
 03 sole purchase of reselling it is inconsistent with DWP's charge.  
 04 SENATOR MORROW: Well, that actually was going to  
 05 be my next question. And also, what DWP's policy is with  
 06 respect to speculative trading.  
 07 Let me venture those questions to you.  
 08 MR. WARD: DWP's definition of speculative  
 09 trading is, getting into a position with the hopes that that  
 10 price will move up or down in your favor.  
 11 In this particular case, there was no  
 12 speculation. DWP was going to receive \$25 per megawatt hour for  
 13 transport. And because we don't have a protocol or a method of  
 14 dealing in transmission in real time, people generally do what  
 15 they call a buy-resale, and you buy here, and you sell over  
 16 here, and you get a fee for that. And it's no different in  
 17 reality than selling a transmission product.  
 18 SENATOR MORROW: That's it for me.  
 19 SENATOR BOWEN: Didn't LADWP have an interest in  
 20 the generation at Palo Verde at this point?  
 21 MR. WARD: The generating station?  
 22 SENATOR BOWEN: Yes.  
 23 MR. WARD: DWP owns, I believe, about  
 24 nine-and-a-half percent of Palo Verde.  
 25 SENATOR BOWEN: So, part of the gain on this  
 26 transaction was actually the gain from the first sale. IID was  
 27 controlling the output at Palo Verde, but LADWP has -- I thought  
 28 it was a larger interest, but I must confess, there are a lot of  
 0164 numbers in my head.  
 02 MR. WARD: Palo Verde's also a switching station  
 03 or a transmission hub.  
 04 SENATOR BOWEN: Right, but there's a generating  
 05 facility there.  
 06 MR. WARD: Right, but they also do transactions,  
 07 and PGET had purchased 50 megawatts from IID at that  
 08 transmission line.  
 09 SENATOR BOWEN: This didn't come from the Palo  
 10 Verde generating station; it came through the Palo Verde hub?  
 11 MR. WARD: I don't know where it came from. I  
 12 believe IID has some ownership right in Palo Verde. It could  
 13 have come from someplace else.  
 14 SENATOR BOWEN: The thing that's interesting to  
 15 me about some of these transactions is that the pieces of where  
 16 the profit are, aren't all in one place. I think when you look  
 17 at where NEG profits, you see that very clearly. They've got a

18 profit on the first sale to you, to LADWP, then they purchased  
19 some other electrons. And the discussion about which electrons  
20 they are is sort of like, who knows? They don't have a stock  
21 number on them when they get to where ever they're going.  
22 They're just electrons.

23 But NEG profits again at the other end of it.  
24 You know, I look at it, and these are transactions that if one  
25 party did them all by themselves clearly wouldn't fly. They  
26 only work because of the multiple parties who are involved.  
27 But I was just curious about the generating  
28 capacity.

0165

01 CHAIRMAN DUNN: Let me just do some procedural  
02 follow-up questions here very quickly.

03 Mr. Drivon, you did have something.

04 MR. DRIVON: Thank you.

05 I would like to remind Counsel that Mr. Duran did  
06 request a copy of that series of tapes yesterday and was  
07 refused. So, it's not much time, but the request was made.

08 And we make the request again, and you can give  
09 it to us in digital form will be fine. We have a fellow who can  
10 handle that.

11 All recordings of every conversation having to do  
12 with this series of trades, whether the conversations were on  
13 the 11th, or 12th, or some other time, to the best of your  
14 ability to find them, we would make that request.

15 Secondly, during the introductory remarks,  
16 reference was made that this all occurred during a time of  
17 crisis.

18 And my question is, at the time that these  
19 transactions were taking place, that is, hour 22 and hour 23 on  
20 November 11th, was NP 15 congested?

21 MR. WARD: My understanding is that NP -- or that  
22 the ISO had split their zones somewhere around 6:00 p.m.,  
23 between 6:00 and 7:00 p.m. that evening.

24 And also, my understanding is that the ISO only  
25 does that if they have an actual flow problem on Path 15.

26 MR. DRIVON: Was there any request by the ISO to  
27 do a DC Circ at that time?

28 MR. WARD: I don't know, sir.

0166

01 MR. DRIVON: You're familiar with the term, DC  
02 Circ?

03 MR. WARD: Yes, sir. And we can certainly get  
04 that information.

05 MR. DRIVON: That's basically a congestion relief  
06 strategy that involves the use of a DC line circulating  
07 electrons for the purpose of unloading the AC line, stated very  
08 simply; correct?

09 MR. WARD: Yes, sir. What the ISO does is  
10 transfers some of the flow over to the DC to mitigate or to  
11 off-load the flow on the AC.

12 MR. DRIVON: And the reason, I think you just  
13 answered this question, the reason that you weren't simply paid  
14 a wheel fee to take this 50 electrons to Malin is, you don't  
15 have a procedure for that type of transaction?

16 MR. WARD: Not from the transmission side of the  
17 house, no.

18 MR. DRIVON: And this was on the transmission  
19 side of the house?

20 MR. WARD: This was done because there is no  
21 procedure in our transmission -- from our transmission people to  
22 get this type of thing done. There was unutilized transmission  
23 on DWP's rights, and this allowed that transmission to be  
24 utilized.

25 MR. DRIVON: Another question is this. I'm  
26 talking about bounce-back transactions, avoiding the use of the  
27 term Ricochet.

28 What is the benefit to the consumer of a  
0167 bounce-back transaction?

02 MR. WARD: There was an additional 50 megawatts  
03 transferred from the Southwest, which came out of Arizona,  
04 apparently, that got transported into Northern California.

05 I'm not sure the consumer received any benefit,  
06 considering that the ISO was at their cap.

07 MR. DRIVON: Well, I think you may remember,  
08 could I have Page 118, please, the first long paragraph on the  
09 page.

10 The -- your statement is that the southern power  
11 was delivered to the north, and that helped out.

12 This is the ISO telling NEG that it's probable  
13 the power never left Los Angeles. Do you disagree with that?

14 MR. WARD: Yes, sir. I do disagree with that.

15 MR. DRIVON: And the power that came back, 50  
16 megawatts destined for hour 23, apparently was resold for \$55,  
17 or a \$15 loss by NEG to LA; correct?

18 MR. WARD: That's correct.

19 MR. DRIVON: And did that 50 megawatts make a  
20 complete U-turn up to Malin and back?

21 MR. WARD: No. Once it's sold to Los Angeles,  
22 Los Angeles reduces our generation sources which will bring the  
23 power into Los Angeles.

24 If we do not make any generation changes, then  
25 the power simply flows through our system to the adjacent  
26 system.

27 MR. DRIVON: In this situation then, it's  
28 probable from your perspective that 50 megawatts did leave LA,  
0168

01 and 50 megawatts didn't; is that right? The first hour's worth  
02 went to Malin and back. The second hour's worth probably  
03 didn't.

04 MR. WARD: That's correct. In the second hour,  
05 the power wasn't scheduled at Malin. It was scheduled into Los  
06 Angeles.

07 MR. DRIVON: One further point. You indicated  
08 that you had had some conversations in January of 2000 with the  
09 ISO concerning these bounce-back strategies.

10 Could I have Page 117, please. Blow up  
11 everything under that line.

12 This is Boyd from the ISO talking to Dave at NEG,  
13 saying,

14 "So anyway, with that  
15 particular schedule, like I  
16 said, as soon as he said LA,  
17 and I've been here long enough  
18 to know LA's tricks ..."

19 "(Dave) Yeah. "

20 "(Boyd) ... I watched for it,  
21 and I allowed it to go for the  
22 first hour. "

23 "(Dave) Right. "

24 "(Boyd) I also then sent it  
25 off to my higher-ups ... to say  
26 hey -- LA's back to ricochet  
27 schedules. Ok?"

28 "(Dave) Yeah. "

0169  
01 "My director has had several  
02 conversations with LA stating

06-27-02.TXT

03 you cannot do that. You have  
04 to deliver it -- you have to  
05 have a sink in the Northwest,  
06 and then it comes back down."

07 "(Dave) Right."

08 "(Boyd) Ok? It never had a  
09 sink in the Northwest. Ok?"

10 "(Dave) Ok."

11 "(Boyd) They won't give me a  
12 sink on it."

13 Does that reflect, do you believe, the  
14 conversations that you say you had with the ISO at this point in  
15 January, or other additional conversations on the point?

16 MR. WARD: I don't remember any other  
17 conversations other than the ones I had, and I believe it was  
18 January.

19 MR. DRIVON: One final point, 133, please. Just  
20 about in the middle of the page. It starts, "The transaction in  
21 question."

22 I believe this is a news release that you put out  
23 June the 25th, implying that -- not implying -- saying that  
24 Senator Dunn was operating without all of the information that  
25 he needed.

26 Do you recall this press release?

27 MR. WARD: Yes, sir.

28 MR. DRIVON: The highlighted section says,

0170  
01 "The transaction in question  
02 netted LADWP a grand total of  
03 \$1,250."

04 Correct?

05 MR. WARD: That's correct.

06 MR. DRIVON: Quote,

07 "This deal was about helping a  
08 fellow utility bring much-  
09 needed energy into the  
10 marketplace, and nothing more."

11 Which fellow utility are we talking about? The  
12 unregulated arm of PG&E, or Constellation?

13 MR. WARD: PG&E had asked us for some way to  
14 transport important energy from the south to the north, and  
15 that's what we -- that's what we did.

16 MR. DRIVON: PG&E or National Energy Group, the  
17 unregulated side of it?

18 MR. WARD: Well, PG&E Trading is the entity that  
19 I'm familiar with.

20 MR. DRIVON: Do you consider PG&E Trading to be a  
21 fellow utility?

22 MR. WARD: I believe that they are affiliated  
23 with PG&E and should be looking at PG&E resources.

24 MR. DRIVON: By that answer do you mean to say  
25 that you consider them to be a fellow utility?

26 MR. WARD: I think we considered them part of  
27 PG&E, just as we consider Sempra San Diego.

28 SENATOR BOWEN: Question, Mr. Chair.

0171  
01 It's my understanding that there's a requirement  
02 that National Energy Group, PG&E Trading, establish a wall  
03 between the utility operations and the trading operations.

04 Is that your understanding, that they're legally  
05 not allowed to talk to -- PG&E the utility, when it's  
06 scheduling, is not legally allowed to give NEG a call and say,  
07 "Hey, what you got."

08 Do you know?

09 MR. WARD: I believe there's not to be

10 communications between PG&E Trading and PG&E the transmission  
11 company.  
12 SENATOR BOWEN: Transmission and distribution.  
13 MR. WARD: Yeah, transmission and distribution.  
14 SENATOR BOWEN: The folks who have the obligation  
15 to serve.  
16 MR. WARD: Yes.  
17 SENATOR BOWEN: We've been tossing around terms  
18 lightly here. One of the things I'm going to suggest is that we  
19 get much clearer when we're talking about -- because we've got  
20 PG&E, NEG, PGET. I think we need to be really clear, because if  
21 your response is that you were helping out NEG fulfill a need,  
22 they are not legally allowed to talk to PG&E, the utility that  
23 has the obligation to serve. They're just a trading company.  
24 MR. DRIVON: And NEG, to my knowledge, has no  
25 load they can schedule in California.  
26 SENATOR BOWEN: They're other traders, with a  
27 "d".  
28 CHAIRMAN DUNN: Senator Morrow, any further  
0172 questions from you on this issue?  
01 Okay. Mr. Drivon, are you through?  
02 MR. DRIVON: Thank you, Senator.  
03 CHAIRMAN DUNN: Let me wrap up this part of it,  
04 and I know we've got a little bit more, and I suspect Evelyn  
05 wants another quick break.  
06 I'm not going to use this committee hearing to  
07 engage in a he said/she said debate with respect to your press  
08 release, but just let me offer a personal comment, if I may.  
09 Your press release says,  
10 "However, according to Wiggs,  
11 the entire substance of Dunn's  
12 case against LADWP rests on an  
13 e-mail from PGT trader."  
14 I don't have a case against LADWP.  
15 We had one e-mail, Mr. Ward, that raised a very  
16 serious concern. That's what I've said to anybody who has asked  
17 about this.  
18 If Ricochet in that e-mail indicated that LADWP  
19 was engaging in Enron-style Ricochet, I had serious concerns  
20 about the veracity of your declaration to this committee.  
21 I also shared that, not as an allegation, as  
22 question mark. That we needed to probe into this.  
23 That's what we've done.  
24 I find it disturbing that LADWP initially gets on  
25 the defensive and issues this kind of press release.  
26 It's your business. That's fine. I understand.  
27 I'm in political office, and we can't have thick skin in this,  
0173 but it didn't bode well when I've made not allegations against  
01 LADWP. I simply raised questions based on e-mail that was  
02 produced to us by another market participant.  
03 I believe after today's hearing on this issue,  
04 we, as oftentimes is the case, we now have more questions than  
05 we do answers.  
06 I suspect everyone from LADWP is as equally  
07 interested as this committee is in resolving the conflict  
08 between two transcripts. That resolution is critical for a lot  
09 of different reasons. I don't think anybody disagrees with  
10 that.  
11 We will continue to work in the same vein that  
12 we've always worked. We welcome your cooperation.  
13 I echo Senator Morrow's comments from earlier.  
14 He has led that aspect of the investigation with respect to the  
15 municipal electricity system, including LADWP, and I don't agree  
16

17 that LADWP has been completely cooperative with this committee.  
18 I hope that changes.

19 But we do need to get to the bottom of this,  
20 Mr. Ward. I have talked to a number of people about you  
21 individually, and you come with tremendous recommendations,  
22 everybody I've talked to that's worked with you, and had  
23 business with you. And as a result of those conversations,  
24 since I don't think I've met you before, I assume that you are  
25 as represented by all the folks that have dealt with you.

26 MR. WARD: Thank you, sir.

27 CHAIRMAN DUNN: I hope we can get to the bottom  
28 of this.

0174  
01 But as you can expect from our perspective,  
02 looking at that e-mail and then looking at the NEG transcript  
03 produced to us, it doesn't look good. It really looks just  
04 down-right rotten, particularly with Senator Bowen's  
05 clarification that, okay, maybe it wasn't an effort to evade  
06 price caps, but the effect on the California consumer is the  
07 same if it stays under the price cap. But the price got raised  
08 substantially anyways.

09 So, we will continue looking at this. I suspect  
10 in the very near future, we may be back on this issue. I doubt  
11 quite at the length we were today, but we'll be back on it.

12 Evelyn, why don't we take a few minutes.

13 Oh, Mr. Drivon.

14 MR. DRIVON: The tape.

15 CHAIRMAN DUNN: Mr. Drivon, thank you very much.

16 If we could have the tape, and we will make a  
17 copy and give it to you immediately, Mr. Ward.

18 MR. WARD: Thank you, sir.

19 CHAIRMAN DUNN: You're most welcome.

20 MR. SNYDER: When you're making the copy, we  
21 tried. You're going to need fairly sophisticated equipment,  
22 because the one time we tried, it came out garbled.

23 CHAIRMAN DUNN: Understood. We generally have  
24 access to that, so we will get that, the copy, to you as well.

25 MR. DRIVON: Let the record reflect I have  
26 received the tape.

27 CHAIRMAN DUNN: And Mr. Ward or Mr. Snyder, I  
28 have no problem if we work through the City Counsel's Office. I

0175  
01 expect that would probably be your preference.

02 MR. SNYDER: That's fine.

03 CHAIRMAN DUNN: All right, we'll do that.

04 We have few other issues we need to address,  
05 Senator Morrow.

06 SENATOR MORROW: Yes, Mr. Chairman. Perhaps we  
07 can have, in view of the hour, if I can have maybe ten minutes,  
08 I think I can probably facilitate it and make it quicker with  
09 that ten-minute investment.

10 CHAIRMAN DUNN: No problem whatsoever.

11 We're recess for ten minutes.

12 [Thereupon a brief recess  
13 was taken.]

14 CHAIRMAN DUNN: Welcome back to our final segment  
15 in our usual tone of brevity in our hearing. We're only at hour  
16 number six, I believe, much to Evelyn's chagrin.

17 The fourth item that we're going to deal with --  
18 I can't say this afternoon any more; I have to say this evening  
19 -- is the responses from NCPA and the City of Redding to the  
20 previous committee testimony, specifically referring to  
21 Mr. McCullough.

22 I want to turn this part of the hearing over to  
23 Senator Morrow.

24 SENATOR MORROW: Thank you, Mr. Chairman.  
 25 In view of the hour, and this will work to the  
 26 benefit of both Redding and NCPA, it will be a lot more  
 27 abbreviated than had we begun at 1:00 o'clock, I'm sure.  
 28 To begin with, I apologize. I don't think we've  
 0176 met before. If you folks could identify yourselves for the  
 01 record at the table.  
 02 MS. FISTOLERA: John Fistolera, with the  
 03 Northern California Power Agency.  
 04 MR. DAME: I'm Don Dame, Assistant General  
 05 Manager for Power Management of Northern California Power  
 06 Agency. And I oversee for the NCPA ten-member power pool, all  
 07 the dispatchings, scheduling, and trading activities that take  
 08 place on behalf of that pool.  
 09 MR. FEIDER: I'm James Feider, the Director of  
 10 the Redding Electric Utility for the City of Redding.  
 11 SENATOR MORROW: Thank you, sir.  
 12 Let me begin with Redding.  
 13 Oh, we need to do the oath thing.  
 14 [Thereupon the witnesses,  
 15 JOHN FISTOLERA, DON DAME,  
 16 and JAMES FEIDER swore to  
 17 tell the truth, the whole  
 18 truth, and nothing but the  
 19 truth.]  
 20 SENATOR MORROW: Let's go to Redding first, if we  
 21 can. If you could, provide the committee in general a brief  
 22 overview with regard to Redding Electric Utility, the  
 23 transmission assets and rights that it possesses, including  
 24 those in the California-Oregon intertie.  
 25 MR. FEIDER: I'd be glad to do that.  
 26 Thank you, Mr. Vice Chairman, Mr. Chairman. I  
 27 just have a brief opening statement. If that doesn't cover your  
 0177 guidance, I'll try to do that.  
 01 SENATOR MORROW: That's fine. Remember, I'm  
 02 trying to be brief, too.  
 03 MR. FEIDER: Okay, this is a very brief  
 04 statement.  
 05 I'm here at your request to discuss and answer  
 06 questions pertaining to Robert McCullough's June 5th, 2002  
 07 testimony before the Select Committee as it pertains to Enron's  
 08 transmission and trading strategies that involve the City of  
 09 Redding.  
 10 On June 18th, the City of Redding provided a  
 11 written reply on this matter in response to Vice Chairman  
 12 Morrow's June 11th request. This reply was provided in  
 13 accordance with the committee's confidentiality agreement.  
 14 I would like to summarize Redding's response to  
 15 the McCullough Report.  
 16 The Redding Electric Utility is a relatively  
 17 small municipal utility, serving about 40,000 customers, with a  
 18 peak load of about 210 megawatts in the summer time, which is  
 19 less than one-half of one percent of the statewide peak demand  
 20 for electricity.  
 21 Redding has acquired generation and transmission  
 22 assets to assure the reliable delivery of electricity to its  
 23 customers at the lowest possible cost. When Redding buys or  
 24 sells power in the wholesale market, we do so in accordance with  
 25 established rules and protocols.  
 26 The June 5th McCullough testimony accuses Redding  
 27 of participating in, quote, "imaginary transactions dubbed Red  
 0178 Congo by Enron."  
 01

Mr. McCullough's June 5th memo to his clients, which I understand was made part of his June 5th testimony, also states that Redding figured significantly and prominently in the so-called schemes.

Redding takes exception to Mr. McCullough's characterization of Redding's transactions with Enron. First of all, Redding participated in only three trades, for a total of 14 hours, that were related to what Enron has called Red Congo. These three trades, ranging from 10 megawatts to 25 megawatts, hardly make them either prominent or significant.

Secondly, Redding believed that these three trades would actually relieve transmission congestion. These trades may have contributed to the fact that there was no congestion as determined by the California Independent System Operator during these 14 hours, and thus, no congestion revenues were received by Redding.

Lastly, All of our transactions constitute real, not imaginary -- as described by Mr. McCullough -- power schedules in accordance with standard industry practices.

Thank you for the opportunity to make this statement.

I would just add, at your request, Mr. Vice Chairman, Redding has an entitlement to approximately 100 megawatts of transfer capability across the California-Oregon Transmission Project, which is a part of the three-line AC system between California and the Northwest.

Redding also has transmission rights going south through the state into the desert southwest that range anywhere from 25 megawatts to 33 megawatts.

SENATOR MORROW: Is that it then?

MR. FEIDER: Yes, sir.

SENATOR MORROW: Why don't we just get to it. I think it's Number 67, which should be an e-mail.

Let me refer your attention, I think you're familiar with this document. This is an e-mail to Portland Shift. Apparently we got this from Enron. Subject, Project Red Congo, that you referred to.

Are you familiar with this?

MR. FEIDER: Yes. This e-mail, this document came to our attention that Enron provided it to us as a part of their reply to various governmental investigations. And we received this in about the mid-May timeframe, just a little over a month ago.

SENATOR MORROW: It refers to, and you mentioned in your opening statement, Project Red Congo. Are you familiar, I mean, before you received this, are you familiar with Project Red Congo?

MR. FEIDER: Redding had no knowledge of this nickname, so-called nickname that Enron used in this document.

SENATOR MORROW: When was the first time you -- and when I say "you," I mean Redding collectively -- to your knowledge, when was the first time that Red Congo, or the terminology Red Congo, came to your attention?

MR. FEIDER: When we received this document in the mid-May timeframe.

SENATOR MORROW: Do you have any idea what Red Congo stands for, or why that particular word?

MR. FEIDER: Well, it's my impression that Red stands for Redding, and Congo stands for congestion. So, it's a short nickname for a congestion transaction.

SENATOR MORROW: You indicated that you're familiar with the -- and I'm going to kind of walk you through it to help me understand what this may or may not say here.

09 After you reviewed this document, does it  
10 accurately describe the strategy that Redding had worked out  
11 with Enron?  
12 MR. FEIDER: Well, it's been a couple of weeks  
13 since I looked at this specific document.  
14 SENATOR MORROW: If you need to, take a moment.  
15 MR. FEIDER: If you can give me a copy of that,  
16 that might be helpful.  
17 Even when we got this from Enron it was difficult  
18 to read because of the handwritten notes.  
19 With regard to the typewritten parts of this that  
20 I've reviewed, I agree that that was the basis for the  
21 transaction.  
22 SENATOR MORROW: All right.  
23 Explain to me, obviously Redding and Enron has  
24 some sort of trading relationship in the industry, I take it;  
25 correct?  
26 MR. FEIDER: Well, Redding trades power with  
27 Enron, just like any other market participant.  
28 SENATOR MORROW: With respect to this transaction  
0181 that it describes, I don't know if Redding had different  
02 terminology besides Red Congo, but with respect to that, how did  
03 it come about? Who first approached who to begin with? Did  
04 Enron come to you folks, or what?  
05 MR. FEIDER: Yes. When I interviewed my trading  
06 organization, they represented that Enron came to them in the  
07 spring, which was a short time before these trades were made,  
08 and suggested this arrangement for relieving transmission  
09 congestion.  
10 SENATOR MORROW: I'm sorry, I should have asked  
11 you a few more preliminary questions before we delved into this.  
12 It happens when you try to expedite things.  
13 Will you give us a little bit about your  
14 background, how long you've been with this utility?  
15 MR. FEIDER: Sure. I've been with the Redding  
16 Electric Utility for almost five years, it'll be five years  
17 August of this year, as the Director of the Utility.  
18 Prior to that, I was the Regional Manager for the  
19 Western Area Power Administration in Folsom.  
20 SENATOR MORROW: So, you were around when this  
21 particular strategy was developed, then, with Redding.  
22 MR. FEIDER: I was in places, the Director, yes.  
23 SENATOR MORROW: And in that capacity, you're  
24 familiar with that; correct?  
25 MR. FEIDER: Well, at the time these trades were  
26 going on, I wasn't familiar with the specific, but I did delve  
27 into this when this issue surfaced.  
28 SENATOR MORROW: How did this come about?  
0182 MR. FEIDER: I'm sorry, what?  
02 SENATOR MORROW: How did the strategy come about?  
03 How did this relationship with Enron come about?  
04 MR. FEIDER: Well, I think in normal course of  
05 business with Enron discussing with our trading people, trading  
06 arrangements or possibilities, they approached us with this --  
07 with this arrangement. And our people in charge of doing real-  
08 time scheduling thought it would be worth trying a transaction  
09 or two to see how it worked.  
10 SENATOR MORROW: First of all, those folks at  
11 Enron who approached REU, you folks, who were they?  
12 MR. FEIDER: I don't have the names, Senator. I  
13 could try to go back to my staff and get them for you, if you'd  
14 like.  
15 SENATOR MORROW: Let me just make that request.

16 MR. FEIDER: Okay, I'd be glad to do that.  
 17 SENATOR MORROW: Secondly, with respect to their  
 18 coming to Redding, who at REU did they come to and was involved  
 19 in this?  
 20 MR. FEIDER: As I had indicated, typically they  
 21 would meet with my power trading supervising staff. So, there  
 22 might be two to four people involved in that meeting.  
 23 SENATOR MORROW: When Enron came to Redding,  
 24 basically, if you will, what was their pitch? What did they  
 25 suggest, or how did this come about?  
 26 MR. FEIDER: I think they just brought it up as a  
 27 possibility to my people and discussed it verbally, without  
 28 taking it any further than that at that time.

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 01 SENATOR MORROW: A possibility for what?  
 02 MR. FEIDER: For doing a transmission congestion  
 03 arrangement of some sort to relieve the Pacific AC intertie when  
 04 it's congested.  
 05 SENATOR MORROW: If you can, and looking at this,  
 06 describe for me the nature of this transaction, the strategy  
 07 involved, and how, if at all, it relieved congestion?  
 08 MR. FEIDER: Okay. As indicated in the document  
 09 here, Redding would purchase an amount of power, in this case --  
 10 well, for example, on May 6th --  
 11 SENATOR MORROW: That was one of the three  
 12 instances.  
 13 MR. FEIDER: That's one of the three instances,  
 14 yes. We would purchase 10 megawatts from PacifiCorp. I believe  
 15 we bought it at a price of \$22 a megawatt hour. We brought it  
 16 across our transmission rights under the California-Oregon  
 17 Transmission Project as a schedule from PacifiCorp to Redding.  
 18 We sold that power to Enron in Northern California, and I  
 19 believe the price was for \$20, so it was at a net loss of \$2 per  
 20 megawatt hour on that piece of the transaction.  
 21 It was our understanding that Enron then  
 22 scheduled a similar amount of power back to PacifiCorp on the  
 23 ISO's transmission services on the other -- the remaining  
 24 portion of the Pacific AC intertie.  
 25 SENATOR MORROW: So, you then --  
 26 MR. FEIDER: I'm sorry, Senator.  
 27 To complete the arrangement, it was our real-time  
 28 traders' verbal understanding with Enron, if Enron received any

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 01 transmission congestion revenues from the ISO, then they would  
 02 share those with Redding on a 50-50 basis. However, there were  
 03 none, and so we didn't receive any.  
 04 SENATOR MORROW: So, there was a profit sharing  
 05 arrangement?  
 06 MR. FEIDER: It was a sharing in the revenues.  
 07 SENATOR MORROW: And that revenue would be  
 08 generated from?  
 09 MR. FEIDER: The revenue that Enron would  
 10 receive, if any, from the ISO for relieving congestion.  
 11 SENATOR MORROW: Was that a formal transaction?  
 12 Was there any sort of a formal contract?  
 13 MR. FEIDER: We treated it as a verbal real-time  
 14 contract, which is pretty standard in the industry when you're  
 15 dealing on just short-term hourly transactions. It's a verbal  
 16 transaction from a trader-to-trader basis.  
 17 SENATOR MORROW: Are there any documents that REU  
 18 has or in possession of that you're aware of that would document  
 19 that relationship with Enron?  
 20 MR. FEIDER: We, as I attached in my response to  
 21 the committee, under the confidentiality provisions, we have our  
 22 log sheets from the dispatcher that document that transaction

23 and show both when the transaction started and when it ended.  
 24 SENATOR MORROW: I understand that, but do you  
 25 have documents that would document the relationship,  
 26 particularly the 50-50 split arrangement that apparently you had  
 27 with Enron?  
 28 MR. FEIDER: Only verbally and as noted in the  
 0185 log sheet.  
 01 SENATOR MORROW: Now, walk me through this. Says  
 02 the chain of events are as follows, "SC," presumably scheduling  
 03 coordinator, "trade with WAMP."  
 04 What is WAMP?  
 05 MR. FEIDER: That stands for the Western Area  
 06 Power Administration, Mid-Pacific Region. And they -- we  
 07 provide them all our transmission schedules, and they pass them  
 08 along.  
 09 SENATOR MORROW: So, they're your scheduling  
 10 coordinator?  
 11 MR. FEIDER: Uh, technically, they're our  
 12 scheduling coordinator with a small "s" and a small "c," per the  
 13 definition of the ISO's protocols. But anyway, they are an  
 14 intermediary that we submit all our schedules to.  
 15 SENATOR MORROW: So this first line refers to  
 16 basically Redding's purchase of power from PacifiCorp; is that  
 17 correct?  
 18 MR. FEIDER: Yes.  
 19 SENATOR MORROW: In this instance. So, you  
 20 purchased that from PacifiCorp.  
 21 The second item,  
 22 "N-F export with sale to PACW  
 23 at \$20."  
 24 What does that mean?  
 25 MR. FEIDER: That is where Enron is selling power  
 26 back to PacifiCorp at \$20. They don't exactly have these things  
 27 in -- in the sequence that they necessarily occur. They kind of  
 0186 occur simultaneously. So, really, the first step is Step 3,  
 02 where Redding buys energy from PacifiCorp at COB at \$21 and that  
 03 -- and then we sell that through an SC trade through the WAMP  
 04 scheduling coordinator arrangements, and then Enron would export  
 05 that to PacifiCorp for \$20.  
 06 SENATOR MORROW: And Item 4,  
 07 "Redding uses their existing  
 08 transmission capacity to take  
 09 energy from COB to Tracy,  
 10 where we traditionally  
 11 transact via SC trade."  
 12 What does that mean to you?  
 13 MR. FEIDER: That's the standard arrangement  
 14 where, if we were selling power to somebody in the Northern  
 15 California area, it transacts at Tracy, our contractual trading  
 16 hub, if you will, where there's an SC-to-SC trade.  
 17 SENATOR MORROW: So, at least thus far, this  
 18 e-mail accurately reflects the trading relationship between  
 19 Redding and Enron?  
 20 MR. FEIDER: Yes, it does.  
 21 SENATOR MORROW: The next line says,  
 22 "We have now relieved  
 23 congestion for the ISO."  
 24 Explain that, if you can.  
 25 MR. FEIDER: I believe what Enron is trying to  
 26 convey here is, if the transmission path is congested from the  
 27 north to the south, they have scheduled power in the opposite  
 28 direction from the south to the north, thereby according to the  
 0187

01 ISO's congestion management arrangement, they have then relieved  
02 congestion.  
03 SENATOR MORROW: So, it says,  
04 "We have now relieved  
05 congestion for the ISO."  
06 Explain to me how is it that the ISO would  
07 believe that congestion has been relieved?  
08 MR. FEIDER: Because when they're looking at the  
09 transmission on the Pacific AC intertie, and they see a  
10 congested path from north to south, and then this schedule going  
11 in the other direction would help to unload that.  
12 SENATOR MORROW: And the schedule going in the  
13 other direction is under what line?  
14 MR. FEIDER: It's under the ISO's purview of the  
15 -- that they have on the Pacific AC intertie.  
16 SENATOR MORROW: Is that the California-Oregon,  
17 what is it, Trading Project, or what's that called?  
18 MR. FEIDER: No. Redding is importing the power  
19 on its share of the California-Oregon Transmission Project.  
20 Enron is sending a similar amount of power back the other  
21 direction under the Pacific AC intertie, which is the other two  
22 high voltage lines.  
23 SENATOR MORROW: Has Redding provided, as we  
24 requested, any and all documents reflecting communications  
25 corresponding with Enron on this particular strategy?  
26 MR. FEIDER: As far as I know we have. The only  
27 communications were in that meeting, which I don't -- there were  
28 no documentations of those communications, and the  
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01 communications that we had in the real-time that consumated  
02 these transactions are documented in the log sheets that I've  
03 attached to our response.  
04 SENATOR MORROW: The next line,  
05 "Redding is on board with this  
06 strategy as is PacifiCorp."  
07 Do you have contact, does Redding have contact,  
08 communications, with PacifiCorp regarding this strategy?  
09 MR. FEIDER: It's not -- we would contact  
10 PacifiCorp to make the power purchase. And then it would be up  
11 to Enron to consumate any transaction back to PacifiCorp.  
12 SENATOR MORROW: Okay. Go ahead. You had a  
13 question, Mr. Chavez.  
14 MR. CHAVEZ: Do you record your transactions?  
15 MR. FEIDER: I'm sorry?  
16 MR. CHAVEZ: Do you audio record your  
17 transactions?  
18 MR. FEIDER: Yes. We have tape recordings of our  
19 transactions.  
20 MR. CHAVEZ: Did you tape this particular  
21 transaction?  
22 MR. FEIDER: This transaction is taped. When I  
23 was investigating this, I asked to listen to these tapes  
24 personally. And I was informed that we still have the tapes,  
25 which perhaps could be made available, but we don't have -- we  
26 changed technology, so the tapes back in this timeframe, May of  
27 2000, were analog tapes, the old-fashioned reel-to-reel type  
28 tapes, that were recycled on a fairly frequent basis. And then  
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01 later in the year, we switched to a digital technology.  
02 And so, we still have the tapes. If the  
03 committee would like, we could try to access the technology to  
04 listen to them and make those transcripts available to you.  
05 MR. CHAVEZ: Yes, please.  
06 SENATOR MORROW: If you would, we would  
07 appreciate that.

MR. FEIDER: If we run into troubled technology and you have better access than we do, we'll get to you within the next couple of days for that help.

SENATOR MORROW: Appreciate it. Now, in your written response to our interrogatories, you set forth the three particular transactions, but I just want to clarify.

As you indicated in your opening statement, those are the only three transactions under the strategy that Redding ever undertook with Enron; that is correct?

MR. FEIDER: Yes.

SENATOR MORROW: No more, okay. With respect to those three, if you've read in the McCullough Report and everything else, what was important wasn't so much the flow of electrons, if you will, but just the fact that it was scheduled.

In this particular case, was it just a scheduling transaction, or was there actually a flow of energy consistent with what was scheduled?

MR. FEIDER: Well, we scheduled the power from PacifiCorp, which would result in a flow of energy.

However, when Enron schedules a similar amount back, you could say, standing back from the California-Oregon border, you probably wouldn't see any difference in the flow. But from our standpoint in the transaction, it was a real transaction. It was entered into our scheduling protocol so that it would result in a real energy flow.

SENATOR MORROW: Let's go to Page 68, blow that up.

Mr. Feider, are you familiar with this document, the "REDDING FATBOY"?

MR. FEIDER: Yes, I am familiar with this document.

SENATOR MORROW: Apparently this was provided to us from Enron. You reviewed this. You got profit sharing in NP 15 or SP 15, a 50-50 split up and down.

Tell me what this document reflects to you? What does it communicate to you?

MR. FEIDER: Sure. First of all, I don't think this document was a part of the McCullough Report. I think it was part of other documents that this committee disclosed at the June 5th hearing.

And similarly to the earlier document that we were talking about, this document was provided to Redding in the mid-May timeframe as a part of Enron's pre-disclosure of submitting documents to governmental investigation. And so, it wasn't until mid-May that we had ever seen this label on any transaction with Redding.

I just wanted to take a minute to review.

SENATOR MORROW: Go ahead, review it.

MR. FEIDER: When we read this in the context of Enron's so-called Fat Boy scheme, the only connection that we could make to this was that Redding would sell what we call real-time energy. In other words, it wasn't scheduled the day-ahead. But during the real time operations, we would sell energy to Enron.

It appears that Enron, as you -- I'm sure you know and recall that the Fat Boy scheme had -- the general arrangement for it was that Enron would overschedule load in the day-ahead market so that they would have surplus generation in the real-time to sell to the ISO, apparently at the ISO's ex-post price.

When we were selling power in the real-time to

15 Enron, we did some transactions with Enron that were based on  
 16 the ISO's ex-post price.  
 17 We had absolutely no knowledge of this so-called  
 18 Fat Boy document, or any of this underscheduling of load, or  
 19 deliberately mismatching load and generation schedules. We  
 20 thought we were selling surplus energy that we had, that we knew  
 21 that the ISO needed. We couldn't sell it directly to the ISO at  
 22 that time, so we would sell it to Enron and other parties in the  
 23 real-time.  
 24 SENATOR MORROW: Again, going back to the Red  
 25 Congo thing here, you've only had three specific transactions  
 26 the entire time.  
 27 Why couldn't you just make all this available on  
 28 your COPT, rather than -- I mean, it seems to be a rather  
 0192 complicated scheme, if you will?  
 02 MR. FEIDER: Um, yes. We've had discussions in  
 03 the past about the ISO's complex trading protocols, and in the  
 04 real-time, there probably is a better way for us to make our  
 05 transmission available. But we have not made much progress in  
 06 any change in the ISO protocols and flexibility -- lack of  
 07 flexibility in their arrangements.  
 08 SENATOR MORROW: One other question. You  
 09 indicated in the May 6th in transaction, where ultimately it was  
 10 a losing situation for you.  
 11 How about the two other transactions?  
 12 MR. FEIDER: Both of those transactions were also  
 13 a losing situation for us because there were no congestion  
 14 revenues.  
 15 SENATOR MORROW: That's all the questions with  
 16 respect that I have to Redding.  
 17 Other members? Anybody else.  
 18 Senator Johannessen, did you have any questions  
 19 or comments?  
 20 CHAIRMAN DUNN: We timed it perfect, Senator  
 21 Johannessen.  
 22 SENATOR JOHANNESSEN: I'm glad to hear that. I  
 23 watched it on television while I was trying to negotiate the  
 24 stupid budget. This wonderful thing we call a budget.  
 25 CHAIRMAN DUNN: Was that an editorial?  
 26 SENATOR JOHANNESSEN: Editorial.  
 27 CHAIRMAN DUNN: All right.  
 28 I have no questions at all on this one, Senator  
 0193 Morrow.  
 02 MR. FEIDER: Just to confirm, I will provide you,  
 03 if my staff can recall the names of the Enron people in that  
 04 meeting in the Spring. And I will also make our best effort to  
 05 provide the taped transcriptions from those three transactions.  
 06 SENATOR MORROW: I would appreciate that. The  
 07 committee appreciates your cooperation in that respect,  
 08 Mr. Feider.  
 09 CHAIRMAN DUNN: Senator Morrow, do you need the  
 10 individual from Redding to remain while we go on to NCPA? Do we  
 11 need him to stay?  
 12 SENATOR MORROW: I don't think so.  
 13 SENATOR JOHANNESSEN: I watched it on television,  
 14 but I just want to point out the difference, not only in the  
 15 demeanor, but a difference in the forthcoming of information and  
 16 everything else that is open, above-board, everything that  
 17 you're getting from Redding. I appreciate it very much.  
 18 CHAIRMAN DUNN: Okay.  
 19 Thank you, sir.  
 20 Senator Morrow.  
 21 SENATOR MORROW: As I've indicated before,

there's been a marked difference between LADWP's involvement and the other utilities.

Let's go to NCPA. Gentlemen, again, I know you briefly identified yourselves. Could you tell me your positions and how long you've been with NCPA, if you could.

MR. FISTOLERA: Again, Mr. Morrow and Senators, John Fistolera. I'm the Legislative Director for the Northern

California Power Agency. I've been there for just over three years.

MR. DAME: I'm Don Dame. I'm Assistant General Manager for Power Management, Business Unit. And part of the responsibilities in that capacity require the oversight of NCPA's trading, scheduling, and dispatch function with regard to the NCPA, a ten-member power pool.

I've been there ten years. I've had this position for approximately five years. I was there and responsible for all the transactions that took place that you will be inquiring about in a minute or two.

Prior to that, I worked for Bonneville Power. I worked for the Department of Water Resources. I worked for Portland General Electric. I worked PacifiCorp. And I worked for Colorado Interstate Gas Company.

SENATOR MORROW: Thank you. Again, with respect to NCPA, if you can give us a brief overview of your transmission assets and your rights.

MR. DAME: We have -- when I say "we," it's really not NCPA that has the transmission rights. It is the particular members of our ten-member pool. They have 130 megawatts of transmission on the COTP, the California-Oregon Transmission Project, through the Transmission Agency of Northern California, normally called TANC.

Through that same organization -- and that connects with NP 15, or Northern California in the Pacific Northwest.

They also have 21 megawatts of capacity that we

call South of Tesla capacity. That's a contract arrangement with Pacific Gas and Electric, going from NP 15, or Northern California, to the Midway substation.

Those -- the rights under those arrangements are honored under what we call existing contract rights. So, we have firm transmission capability not subject to congestion charges across those lines, nor do we get congestion payments for power flows that are across those lines.

SENATOR MORROW: What policies and procedures, or guidelines, do you have with respect to making your transmission capacity available to other market participants?

MR. DAME: Well, a long-standing policy that we've had at NCPA, going back with the formation of our power pool, and then what we call our three-peat document, which was initialized in mid-1997, which we have given to this committee.

We first and foremost use our assets in provision of the loads for the member utilities. If we do have surplus assets, whether they be generation plant, portions of a contract that are being unused, or transmission assets that are being unused, we will attempt to market, find another use of those assets in order to provide cost offsets to our members. In other words, to reduce their total bills for services at NCPA.

SENATOR MORROW: All right.

If I can refer to number 84, which is a document, again, that was produced to us from Enron. Are you familiar that document?

MR. DAME: Yes, I am familiar with that document.

SENATOR MORROW: If you can't see it, do you have

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01 copy in front of you?

02 MR. DAME: Yes, I do.

03 SENATOR MORROW: I'd like to walk you through a  
04 few things here.

05 MR. DAME: I have it.

06 SENATOR MORROW: Okay. Now, this appears to be a  
07 transmission management, it states in its title, "Transmission  
08 Management Proposal between Northern California Power Agency  
09 (NCPA) and Williams Energy Marketing and Trading Company."

10 First of all, with respect to this document, who  
11 generated this document?

12 MR. DAME: I believe that NCPA generated this  
13 document. I believe it was generated by Don Imamura, one of our  
14 traders. He is the person that is on the little FAX post-it  
15 that's down in the lower left. Normally called Don I, so it's  
16 short For Don Imamura.

17 SENATOR MORROW: Could you spell his last name.

18 MR. DAME: I-m-a-m-u-r-a.

19 SENATOR MORROW: Okay. Have you seen this  
20 document before?

21 MR. DAME: Actually, I had not seen this document  
22 until we got the FAX from Enron. And why -- I don't think  
23 anybody here on this committee had seen this before either. We  
24 did not have a copy of this document in our files. We could not  
25 find a copy of this document in our files.

26 SENATOR MORROW: Now, in your position that  
27 you've held for some period of time, if there was such a  
28 transmission management proposal generated by your organization,

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01 would you have seen it?

02 MR. DAME: I was aware of the management  
03 arrangement. I haven't particularly seen the details of this  
04 contract, but I was aware. And we discussed the utilization of  
05 our transmission capability in this manner.

06 SENATOR MORROW: One of the questions that comes  
07 to mind, and you've answered the question I honestly did not  
08 know the answer to, and that is that this was generated by NCPA.

09 First question that comes to mind, given that  
10 we've requested, and you've complied with document production to  
11 some degree, to our knowledge this hasn't been produced by NCPA.  
12 If that's the case, why not?

13 MR. FISTOLERA: This document was also produced  
14 by NCPA to your staff, not initially, but in response to the  
15 most recent interrogatories before the June 5th hearing.

16 As soon as we saw the document -- we did not  
17 produce it with your original document request because we didn't  
18 have it in our records. But when we got the document from  
19 Enron, pursuant to FERC's interrogatories, we also produced it  
20 in an amendment to our response to FERC and in our response to  
21 the committee's interrogatories.

22 SENATOR MORROW: So once you obtained this from  
23 Enron, then you disclosed it.

24 MR. FISTOLERA: We supplied it to the committee  
25 staff.

26 SENATOR MORROW: Which again, it kind of still  
27 goes to my question, though. If this was generated by NCPA, and  
28 we requested this, I seem to be hearing that you didn't have

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01 this document. If that's the case, what happened to it? Why  
02 wasn't it produced before it came to your attention.

03 CHAIRMAN DUNN: Senator Morrow, may I interrupt?  
04 I just wanted to follow-up on that, because I think what we're  
05 asking here is not necessarily this one with this handwriting on  
06 it, et cetera, but the original document, which I think the

07 witness testified was generated by NCPA.

08 MR. DAME: Well, I believe it was generated by  
09 NCPA. It may have indeed been generated by Williams.

10 CHAIRMAN DUNN: I'm sorry, didn't mean to  
11 interrupt, Senator Morrow. I think there was some confusion on  
12 that.

13 SENATOR MORROW: No, no. Thank you for the  
14 clarification. That's certainly what I meant.

15 I'm sorry. I'm not sure if I heard your answer  
16 or not, or if you answered, in terms of why it wasn't produced  
17 earlier?

18 MR. DAME: It wasn't produced because we did not  
19 have the document in our files. It may be in our warehouse  
20 somewhere. I don't believe it is.

21 We've also had some turnover in personnel between  
22 our mid and back office. Typically, when our traders start up a  
23 transaction like this, they'll write a sketch sheet that'll go  
24 to the dispatchers for day-to-day handling of the transaction,  
25 and then the transaction goes to our back office for processing  
26 and invoicing, and to assure that either payment is received, or  
27 payment is made, depending on which way the transaction was  
28 going.

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01 SENATOR MORROW: It appears to be your belief at  
02 least that this was generated by NCPA, and therefore is a  
03 proposal from NCPA in this case to Williams, or initially to  
04 Williams. Is that correct?

05 MR. FISTOLERA: I think actually, as I followed  
06 the discussion of this particular document, the original deal  
07 was with Williams, who approached NCPA. NCPA actually entered  
08 into an agreement with Williams for use of our transmission,  
09 which they never executed.

10 The marked document that you see here, where  
11 Enron has been substituted for Williams, I believe in a  
12 discussion between Enron and NCPA traders, probably Don I, Don I  
13 offered them the same type of transmission agreement that  
14 Williams had proposed to us, but we never actually did any  
15 trades under it.

16 MR. DAME: If I can just clarify.

17 We did a transaction which was very similar to  
18 what you see in this document in December of 1999 and January of  
19 2000, where they, for a fixed fee, we agreed to do a buy-sell  
20 arrangement over this transmission line with them if so  
21 requested.

22 It turned out that we did not flow any power  
23 under this arrangement, but we did indeed collect the flat fee  
24 which, within a hand waive, was about \$25,000 for each of those  
25 months.

26 SENATOR MORROW: You say "them." Are you  
27 referring to Williams?

28 MR. DAME: I'm referring to Williams. That was  
0200  
01 in December of '99 and January of '00.

02 SENATOR MORROW: That was for a flat fee, not for  
03 a 50-50 split?

04 MR. DAME: That was for a flat fee, not for a  
05 50-50 split.

06 SENATOR MORROW: This document at least has under  
07 fee, it presents,

08 "The net monthly profit shall  
09 be shared between NCPA and ..."

10 Williams, I see, is crossed out,  
11 "... in a 50/50-split ...."

12 That's what this agreement is?

13 MR. DAME: That's what this is. And I believe

14 what transpired over that period was, the value of the  
15 transmission was not very significant, because the price  
16 differentials between SP 15 and NP 15 really didn't materialize.

17 Consequently, in attempting to generate some  
18 additional revenues to cover our fixed cost for this line, which  
19 is about \$300,000 a year, we entered into an arrangement with  
20 Enron. And I don't believe we ever formally entered a contract  
21 with Enron. All the transactions that we did with Enron were  
22 done under the cover of the WSPP agreement.

23 SENATOR MORROW: I don't mean to cut you short,  
24 but I'll work up to Enron. Let's go back to Williams for a  
25 moment.

26 MR. DAME: Okay.

27 SENATOR MORROW: Williams came to you, first of  
28 all, with a proposal, this proposal, a profit sharing proposal;

01 is that right?

02 MR. DAME: Well, I don't know whether Williams  
03 came to us or we came to them. In the course of the last five  
04 years, it wouldn't be infrequent for us to be discussing with  
05 marketers the types of generation we had, the types of  
06 transmission rights that we had, and whether there would be any  
07 way to use these assets in a way that would be beneficial to --  
08 more beneficial to NCPA members.

09 SENATOR MORROW: I could be wrong, but a few  
10 minutes ago, I thought heard you say that Williams had  
11 approached NCPA with this proposal. Was that wrong, or you just  
12 didn't know?

13 MR. DAME: I think in the course of discussing  
14 with folks, it may have been one way; it may have been the  
15 other. Again, in discussing the types of assets that you have,  
16 they could have made the proposal. We could have discussed it  
17 with them. We could have said, "Is there any way?"

18 I believe in this particular case, Williams  
19 made -- probably made the proposal to us, but it could have  
20 come from either side.

21 From my perspective, as overseeing this  
22 transmission, it wouldn't have mattered to me whether we had  
23 made the proposal or Williams had made the proposal.

24 SENATOR MORROW: A direct party involved in that  
25 proposal, however, for NCPA would have been Mr. Imamura; is that  
26 correct?

27 MR. DAME: It is could have been a combination of  
28 Mr. Imamura or possibly Kevin McMann, another one of our

01 traders.

02 SENATOR MORROW: No one else?

03 MR. DAME: Possibly Tom Lee. He's our portfolio  
04 manager.

05 SENATOR MORROW: Are those folks still with NCPA?

06 MR. DAME: Yes, they are.

07 SENATOR MORROW: On the other side of the  
08 equation with Williams, who was NCPA interfacing with, with  
09 regard to this proposal?

10 MR. DAME: I'm not sure. I know there were a  
11 couple of folks over the years. Sam Wong was with Williams for  
12 a while, and Kent Palmerton, who formerly worked at NCPA, is  
13 currently with Williams. It could have been one or a  
14 combination of those two folks.

15 SENATOR MORROW: Now, this document, of course,  
16 indicates a 50-50 split. Did NCPA ever engage in any  
17 transaction with a 50-50 split with Williams?

18 MR. DAME: Yes. I think review of our record  
19 shows that from the period of May, 2000 to approximately  
20 November of 2000, we did 46 transactions with Enron, again,

21 under the WSPP umbrella, for a total of about --  
 22 SENATOR MORROW: I'm sorry. Did you say Enron?  
 23 My question, I meant to say Williams.  
 24 MR. DAME: Oh, excuse me. No. I apologize. I'm  
 25 shifting ahead again.  
 26 We never did any transactions with Williams  
 27 beyond receiving the fixed payment from Williams. We never did  
 28 any 50-50 transactions with Williams.

0203  
 01 SENATOR MORROW: Okay. Ultimately, it sounds  
 02 like you did do similar or these types of transactions with  
 03 Enron. And I see in this particular document that Williams has  
 04 been scratched out, and Enron or ENA has been replaced.  
 05 How did that happen?  
 06 MR. DAME: My assumption is, when -- my  
 07 assumption is, and Don I has indicated this to me, that he sent  
 08 this to Enron as a type of pro forma agreement after they had a  
 09 discussion on the phone, to see if Enron might be interested in  
 10 utilizing our transmission capability in some fashion similar to  
 11 this.  
 12 SENATOR MORROW: Let me back up.  
 13 Apparently, this was made out for Williams at one  
 14 point. Why wasn't there any transactions completed consistent  
 15 with this agreement with Williams?  
 16 MR. DAME: Well, again, this was probably a  
 17 proposal made to Williams, and because Williams didn't do any  
 18 transactions in December of 1999 and January of 2000, my  
 19 assumption on Williams' part is, they thought the value of this  
 20 was probably diminimus.  
 21 SENATOR MORROW: That seems to indicate that this  
 22 was a proposal by NCPA to Williams; correct?  
 23 MR. DAME: Again, I'm not sure. I'm not sure of  
 24 that. I'm not sure of that.  
 25 This still could have come to Williams, and it  
 26 just never came -- it never met -- it never came to fruition.  
 27 SENATOR MORROW: This is dated April, 2000.  
 28 Let's go to Enron now.

0204  
 01 When did Enron first become involved in this  
 02 transaction with the NCPA?  
 03 MR. DAME: Well, if you look at the post-it on  
 04 the bottom, it looks like we sent this to Enron. Diana was one  
 05 of the Enron traders, working up in Portland, Oregon. And it  
 06 looks like we sent it to her on April 27th.  
 07 SENATOR MORROW: Do you know Diana's last name,  
 08 what that would be?  
 09 MR. DAME: No, I don't.  
 10 SENATOR MORROW: So, this was a proposal to Enron  
 11 from NCPA?  
 12 MR. DAME: Yeah. We showed them this  
 13 arrangement, albeit somewhat -- we didn't white-out the Williams  
 14 quite sufficiently, but this was a way to just relatively  
 15 quickly send this to Enron and let them take a look, and see if  
 16 they had any interest in doing a transaction similar to this.  
 17 SENATOR MORROW: The decision to send this to  
 18 Enron, whose decision was that?  
 19 MR. DAME: It was probably Don Imamura's.  
 20 SENATOR MORROW: So, that didn't require approval  
 21 by you?  
 22 MR. DAME: Not for transactions that are less  
 23 than 30 days, as long as he's not exceeding the dollar limits  
 24 under his -- under his authorities, trading authorities.  
 25 SENATOR MORROW: This proposes the 50-50 split.  
 26 How did that come about?  
 27 MR. DAME: Well, historically in the utility

28 business, 50-50 split is quite common. We used it originally in  
0205 the pool.

02 It's not uncommon when utilities trade  
03 generation. When we get to substitute generation for one plant  
04 for another plant, you always want to match the -- to get a  
05 little bit technical -- the highest decremental cost plant with  
06 the lowest incremental cost plant. And in order to maximize the  
07 benefits, you share them 50-50. It's a fundamental tenet of our  
08 pool even today with regard to some of the arrangements that we  
09 do.

10 The significant benefit to NCPA here was that we  
11 weren't exposed to any loss at all under this arrangement.

12 And also, the transactions under the arrangement  
13 that we did with Enron were at our discretion. In other words,  
14 Enron didn't have a call to use this transmission, unlike the  
15 earlier arrangements we did with Williams. So, we would only  
16 make this transmission available to them either on a next-day or  
17 next-hour basis if we did not specifically need the transmission  
18 to meet our members' own needs, or to do some other transaction  
19 that we wanted to do.

20 SENATOR MORROW: The 50-50 share in revenues,  
21 you're indicating that that was a common industry transaction?

22 MR. DAME: I think 50-50 sharing of revenues is a  
23 relatively common industry transaction.

24 SENATOR MORROW: Besides Enron and -- well,  
25 apparently this didn't happen with Williams -- have you had any  
26 other, has NCPA had any other transmission management  
27 relationships like this with any other market participant?

28 MR. DAME: I'm trying to think back.

0206  
01 On some of our gas supply arrangements, although  
02 we never actually did any transactions under them, we did have  
03 an arrangement with our gas supplier where, if they could find a  
04 higher and better use for the gas than to burn it at our power  
05 plant, and we could find an alternative source of energy, other  
06 than again burning the gas to produce kilowatt hours ourselves,  
07 we would share that differential on a 50-50 basis. But we never  
08 did any transactions under that arrangement.

09 SENATOR MORROW: Let me go to the 50-50 again.  
10 Whose idea was the 50-50? Was that NCPA's, or was that Enron's?

11 MR. DAME: Well, my guess would be it would be --  
12 I'm guessing on this -- it would be our idea, because Enron  
13 would probably want something like 80-20, or something like  
14 that.

15 SENATOR MORROW: Was it negotiated.

16 MR. DAME: I imagine it was negotiated. I'm not  
17 sure of that.

18 These are -- these one-page transactions not  
19 really uncommon.

20 SENATOR MORROW: Would Mr. Imamura, would he be  
21 the negotiator on this?

22 MR. DAME: Don Imamura, Mr. Imamura, would have  
23 negotiated this.

24 SENATOR MORROW: Now, I apologize. You indicated  
25 how many transactions you did with Enron. Would you say that  
26 again? I didn't take the notes.

27 MR. DAME: We did 46 transactions, but --  
28 although we did them under terms similar to this, we did not do  
0207 them under this agreement.

02 MR. FISTOLERA: And at your staff's last visit to  
03 NCPA, we showed them a host of transaction agreements that  
04 demonstrate some of our trades with Enron, many trades with  
05 other market participants, for a variety of terms that reflected

06 the value of the transmission under those terms.  
07 We've also discussed with them a -- showing, you  
08 know, them models of our transactions between members, which as  
09 Mr. Dame stated, are essentially exclusively the 50-50 --  
10 SENATOR MORROW: What I'm most interested in is  
11 the 50-50 revenue sharing.  
12 As I understand this, you get 50 percent of  
13 whatever the profit is once the power is sold that runs through  
14 your transmission lines; correct?  
15 MR. DAME: That's correct. And generally, we  
16 anticipated that would be the differential -- the differential  
17 in value between SP 15 and NP 15.  
18 SENATOR MORROW: Of the 46 transactions during  
19 the May through November, 2000 time period, how many of those  
20 transactions involved a revenue sharing?  
21 MR. DAME: All of those transactions involved  
22 revenue sharing.  
23 SENATOR MORROW: Was that at a 50-50 split?  
24 MR. DAME: That was at a 50-50 split.  
25 SENATOR MORROW: All 46 of those transactions?  
26 MR. DAME: Yes. And those -- and just those 46  
27 transactions totaled about 6500 megawatt hours. That's like  
28 using that 21 megawatt line about 13 days total, for 24 hours a  
0208 day.  
01 SENATOR MORROW: In looking at the middle, under  
02 "Time Line,"  
03 "10am PPT: ENA shall call NCPA  
04 and NCPA shall inform ENA the  
05 amount of transmission available  
06 for Williams to manage in the  
07 next scheduling day."  
08 Explain for me what do you mean "available for  
09 Williams to manage?"  
10 MR. DAME: Well, in this case it wasn't for  
11 Williams. And certainly --  
12 SENATOR MORROW: I meant Enron.  
13 MR. DAME: -- it was Enron.  
14 And as I indicated earlier, if we knew in setting  
15 our schedules today for tomorrow, because we do it today for  
16 tomorrow's schedule, and then we adjust those hourly, but if we  
17 were doing our schedules today for tomorrow, and we were not  
18 using all or a portion of our SOT, sought capability, we would  
19 call Enron and say, "We think we have 10, 15, all 21 megawatts  
20 available for tomorrow. Are you interested in utilizing this  
21 transmission?"  
22 But if we said we were using it all, Enron had no  
23 prior call. They had no call on that transmission, again, unlike  
24 the Williams arrangement.  
25 And according to the research that we've done on  
26 this, two of those transactions were done on a day-ahead basis,  
27 where we said we would release a certain amount of transmission  
0209 to them today for tomorrow. Where the other 44 of those  
01 transactions were done in the hour-ahead market, where we're  
02 looking ahead on a much shorter timeline.  
03 If we didn't think we needed to use the  
04 transmission line, we would ask Enron if they would want to use  
05 that transmission capability.  
06 SENATOR MORROW: Are you aware of any other  
07 municipal utility districts that have engaged in similar  
08 transactions with a revenue sharing prospect?  
09 MR. DAME: Not that I can think of right off the  
10 top of my head. Again, except between and amongst our  
11 ten-member pool. It's done very regularly and routinely. So, I

guess I do know -- I know ten of them that do it.

SENATOR MORROW: Any other questions by members of the committee?

That's really all I have. Thank you very much, gentlemen. I appreciate it.

MR. DAME: Thank you, Senator Morrow.

CHAIRMAN DUNN: Thank you, both of you. You had the duration. It's lasted the long day. And we do truly appreciate your patience.

Nothing further, Senator Morrow, Senator Bowen? we are adjourned.

[Thereupon this portion of the Senate Select Committee hearing was terminated at approximately. 7:05 P.M.]

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0210

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the hearing of the Senate Select Committee to Investigate Price Manipulation on the Wholesale Energy Market was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

---

EVELYN J. MIZAK  
Shorthand Reporter